

# Tax and Licensing Systems Replacement

## Attachment 3

### Technology Agreement

RFP #K1058

Tax and Licensing Systems Replacement (TLSR)



*"Working together to  
fund Washington's future"*

# ***TECHNOLOGY AGREEMENT***

***BY AND BETWEEN***

***WASHINGTON STATE  
DEPARTMENT OF REVENUE***

***AND***

***[VENDOR]***

***\_\_\_\_\_, 2014***

**DOR TA No. K1508**

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# **SCHEDULES AND EXHIBITS**

## **SCHEDULES**

Schedule 1.6	Definitions
Schedule 3.2.3	Certification Form
Schedule 5.3.2	Change Order Form
Schedule 7.1	Support and Maintenance Services
Attachment A	Multi-Vendor Sourcing Procedures
Attachment B	Support Standards and Support Credits
Schedule 8.1.2	Optional Software
Schedule 8.3.2	Service Rates
Schedule 8.4.1	Form of Vendor Invoice
Schedule 15.3.1	Insurance Coverages
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## **EXHIBITS**

Exhibit 1	TLSR Project Agreement
Exhibit 2	Subcontractor Confidentiality and Non-Disclosure Agreement
Exhibit 3	Third Party Confidentiality and Non-Disclosure Agreement
Exhibit 4	Source Code Escrow Agreement

# **TECHNOLOGY AGREEMENT**

This Technology Agreement ("**Agreement**") is made and entered into as of \_\_\_\_\_, 2014 (the "**Effective Date**"), by and between the Washington State Department of Revenue, an agency of the state of Washington, with a principal place of business at Information Services, 6300 Linderson Way, Tumwater, Washington 98504 ("**DOR**", as further defined herein), and \_\_\_\_\_, a \_\_\_\_\_ corporation, with a principal place of business at \_\_\_\_\_ ("**Vendor**").

**WHEREAS**, on February 7, 2014, DOR issued a request (the "**RFP**", as amended and as further defined herein) to provide, implement, support and maintain a tax and licensing system ("**TLSR**", as further defined herein) to replace its current systems (the implementation of the TLSR is referred to as the "**TLSR Project**").

**WHEREAS**, on May 5, 2014, Vendor submitted to DOR its written response to the RFP, as subsequently supplemented (the "**TLSR RFP Response**", as further defined herein), and in the TLSR RFP Response and otherwise Vendor represented to DOR that it had the software, equipment, services, skills and personnel required to meet the requirements set forth in the RFP and implement the TLSR in accordance with the terms set forth in the Agreement.

**WHEREAS**, Vendor acknowledges that during the negotiation period, including the implementation planning study workshops, it had sufficient time and opportunity to conduct comprehensive due diligence on the TLSR Project, including the ability to obtain a full understanding and clarification of the DOR Business and Technical Requirements.

**WHEREAS**, in reliance on the representations made by Vendor in the TLSR RFP Response and in subsequent discussions, the Demonstrations, presentations to DOR and the commitments and assurances made by Vendor herein, DOR selected Vendor over other prospective technology providers to implement the TLSR.

**WHEREAS**, DOR and Vendor want to specify the terms and conditions under which Vendor and DOR will form their long-term technology partnership, implement the TLSR, and engage in future projects as may be agreed to by the parties.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

## **ARTICLE 1**

### **SCOPE OF AGREEMENT, PARTNERING PRINCIPLES**

### **AND RELATIONSHIP MANAGEMENT**

**1.1 Scope of Agreement.** The Agreement shall apply to all Software, Services and Equipment provided by Vendor to DOR, whether such Software, Services and Equipment are contemplated as of the Effective Date or thereafter, including the licensing of new or additional products, engaging in new or additional projects, purchasing new equipment and the like, which

shall all be subject to all applicable Washington state laws and policies related to competitive procurement.

**1.2 Partnering Principles.** The principles identified below ("**Partnering Principles**") include principles that the parties have determined to be important to ensure the success of their relationship. The Partnering Principles function as "constitutional" statements regarding the parties' overall intentions for the Agreement and all Project Agreements and Contract Supplements executed pursuant to the Agreement. If any term or condition of the Agreement or any Project Agreement or Contract Supplement is ambiguous or unclear or if the parties did not anticipate a particular issue, the parties shall refer to and apply the Partnering Principles to resolve and/or address the ambiguous, unclear and/or unanticipated issue.

#### **PARTNERING PRINCIPLE #1**

#### **DIRECT SENIOR EXECUTIVE OVERSIGHT AND DECISION MAKING**

In a long-term strategic relationship, direct senior executive oversight and involvement by both parties is needed to ensure all commitments and timeframes are met. While ultimate decision making authority with respect to the TLSR Project and future projects rests with DOR, Vendor and DOR must each manage their personnel and discharge their duties within the agreed parameters and requirements to ensure the projects are successfully implemented.

#### **PARTNERING PRINCIPLE #2**

#### **COMPETITIVE PRODUCTS**

DOR will be making a significant investment in Vendor's products, and DOR wants to ensure that Vendor remains a competitive provider of solutions. Vendor commits that its products shall be technologically competitive as measured against other commercially available products of the same types.

#### **PARTNERING PRINCIPLE #3**

#### **COMPETITIVE PRICING, GROWTH OF DOR AND PREDICTABILITY OF ON-GOING COSTS AND EXPENSES**

Vendor's products and Services must be competitively priced and contemplate the growth in use at DOR. Costs and expenses must be clearly articulated and understood by the parties prior to initiating a project or any change orders. Cost, personnel and other resource requirements must be clearly outlined for all parties.

**PARTNERING PRINCIPLE #4****TIME-TO-MARKET SOLUTIONS AND REGULATORY UPDATES**

In a long-term technology relationship, time-to-market for products, including regulatory updates, is critical to DOR. Economic incentives for Vendor must be in place to ensure that Vendor performs on a timely basis and delivers and implements fully tested and operational products.

**PARTNERING PRINCIPLE #5****PRODUCT DEVELOPMENT**

DOR will have the ability to influence Vendor's product development efforts and be given the option to test and implement any new product developments on an early adopter basis. DOR will be integrally involved in Vendor's technology strategic planning process. On-going representation and/or observation and participation rights on Vendor's "top-tier" customer councils and committees should be made available to DOR.

**PARTNERING PRINCIPLE #6****QUALITY PERSONNEL TO SUPPORT THE RELATIONSHIP**

Qualified personnel will be devoted by both parties to the relationship. The parties will commit appropriate, qualified executive and management, administrative, technical and other support personnel to achieve the objectives of the relationship.

**PARTNERING PRINCIPLE #7****COMMITMENT TO OPEN ARCHITECTURE PRODUCTS AND COMPLIANCE WITH DOR'S ENTERPRISE ARCHITECTURE**

Vendor's products will operate in an open architecture environment and in accordance with DOR's enterprise architecture. Vendor will make available to DOR all interfaces and supporting documentation specifications to promote interoperability among DOR's other systems and devices.

**PARTNERING PRINCIPLE #8****COOPERATION WITH DOR'S OTHER TECHNOLOGY PARTNERS**

Given the various technology platforms supporting DOR, joint planning, open communication, and cooperation and collaboration between DOR and all of its technology partners will be required. As such, Vendor will participate in these cooperative activities.

**PARTNERING PRINCIPLE #9****ALIGNMENT OF ACCOUNTABILITY AND RESPONSIBILITY**

Accountability and responsibility of roles should be aligned to ensure that each party is responsible for the aspects of a project or relationship that they control.

**PARTNERING PRINCIPLE #10****PROTECTION OF DOR'S LONG-TERM INVESTMENT IN THE SOLUTION**

Vendor will ensure that DOR's investments in Vendor products are protected economically against shifts in platforms and product migration.

**PARTNERING PRINCIPLE #11****THOROUGH AND SPEEDY ISSUE RESOLUTION**

Vendor and DOR will ensure a thorough and speedy resolution of issues that arise in the relationship, including issues that may arise in a project.

**1.3 Relationship Management.** The parties commit to proactive sponsorship of the relationship created under the Agreement, and to further the interests of the relationship, agree to the following:

**1.3.1 General.** Each party shall allocate appropriate, quality personnel to fulfill the objectives of the relationship including, as appropriate and applicable, personnel to fulfill the development, implementation and support obligations set forth herein and in a Project Agreement and/or Contract Supplement. If either party believes that the other has not allocated sufficient personnel, the matter will be brought to the attention of the Executive Sponsors for resolution.

**1.3.2 Executive Sponsors.** Each party shall designate a senior executive-level individual (for DOR, the "**DOR Executive Sponsor**," and for Vendor, the "**Vendor Executive Sponsor**," and each an "**Executive Sponsor**") who will have overall responsibility for the relationship between the parties with respect to the relationship. The Vendor Executive Sponsor shall be the Chief Executive Officer of Vendor and have full authority to act on behalf of Vendor with respect to all matters related to the Agreement. Each party may designate a new Executive Sponsor at any time by providing written notice thereof to the other party. If DOR determines that individual appointed by Vendor is not fulfilling the goals of the relationship, DOR shall communicate that determination to Vendor, and Vendor shall replace such individual with an individual that both parties agree is suitable to fulfill the Vendor Executive Sponsor role. The Vendor Executive Sponsor's participation as sponsor of the relationship shall not be chargeable to DOR.

**1.3.3 Executive Briefings.** The relationship with Vendor will involve a significant investment and substantial commitment from DOR in the form of monies, personnel, time and effort. During the pendency of the TLSR Project, the Executive Sponsors

and other appropriate representatives from each party shall meet at least quarterly, or more frequently if needed, at DOR's offices, to discuss the overall relationship of the parties, the status of the TLSR Project, the status of and any Issues, Risks and Defects relating to the TLSR Project, whether timeframes are being met, and what actions Vendor can take to mitigate such Issues, Risks and Defects. From and after Project Completion of the TLSR Project, the Executive Sponsors shall meet bi-annually, or more frequently at the request of a party, in alternating locations between Vendor's home office and DOR's offices, to discuss the overall relationship of the parties, any Issues relating to the Product Roadmap, any and such other items as appropriate. Vendor Executive Sponsor's support of the relationship, including participation in phone calls, meeting (on-site and off-site), problem resolution and the like, and any expenses incurred in connection therewith, shall not be chargeable to DOR.

**1.3.4 Vendor Account Executive.** Vendor shall designate an individual (the "**Vendor Account Executive**") to serve as Vendor's day-to-day and regular point of contact to administer the Agreement and projects, oversee the delivery of Software, Equipment and Services to DOR and the overall performance of Vendor's responsibilities under the Agreement and any Project Agreements and Contract Supplements. The Vendor Account Executive shall attend all executive briefings. If DOR perceives that the Vendor Account Executive is not effectively discharging his or her duties, at DOR's request, Vendor shall replace such individual. Vendor shall not charge DOR for any Services, meeting time, etc., provided by the Vendor Account Executive.

**1.3.5 Vendor Project Management.** For each project, Vendor shall appoint one or more Vendor Project Manager(s) ("**Vendor Project Manager(s)**"), and where more than one Vendor Project Manager is assigned, then a project director to oversee the multiple Vendor Project Managers ("**Vendor Project Director**").

**1.3.6 Vendor Contract Manager.** Vendor shall designate an individual (the "**Vendor Contract Manager**") to be responsible primarily for ensuring Vendor's contractual compliance with the Agreement, and for proactively communicating and coordinating with Vendor's Project Director, Project Manager(s) and other Vendor personnel as needed, to ensure such compliance. In furtherance thereof, the Vendor Contract Manager shall, among other things:

(a) Be fully knowledgeable about all the commitments made by Vendor in the Agreement, Project Agreements and Contract Supplements, especially where such commitments may differ from Vendor's general business practices and policies;

(b) Advise Vendor personnel and Vendor's subcontractors on the commitments made by Vendor to ensure the Vendor personnel have a full and complete understanding of the level and scope of the commitments made under the Agreement, Project Agreements and Contract Supplements;

(c) Serve as the single point of contact at Vendor to administer all aspects of the Agreement;

(d) Ensure that all policies and procedures relating to Vendor's administration of the Agreement are applied consistently by Vendor;

(e) Prior to the Project Management Meetings, solicit input from both Vendor and DOR personnel on any Issues and Defects being experienced, and ensure such items are included in the Project Status Report; and

(f) Such other duties or responsibilities relating to the administration of the Agreement as may be reasonably requested from time-to-time by either party.

**1.3.7 Compliance with DOR Security Policies and Procedures, Vendor Information Security Officer, and Security Certifications.**

(a) **Compliance with Security Standards, Policies and Procedures.** Vendor and the Solution shall comply with: (i) the security requirements and obligations required by applicable Law; (ii) the DOR Security Policies and Procedures; (iii) the then-current ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) ISO/IEC 27000 series of Information Security Management Systems standards; and (iv) Vendor's security standards, policies, guidelines and procedures, provided that DOR Security Policies and Procedures shall take precedence over any inconsistencies or conflicts with Vendor's security standards, policies, guidelines and procedures (**subsections (i) through (iv)** are collectively referred to as the "**Security Policies and Procedures**"). If there is a change in the DOR Security Policies and Procedures from and after the Effective Date that Vendor determines increases its costs to provide Services or Support and Maintenance Services, Vendor may submit a Change Request detailing Vendor's reasonable increased costs to comply with such change. DOR will evaluate the Change Request and either sign a Change Order paying the amounts set forth therein, whereupon Vendor shall comply with the change in the DOR Security Policies and Procedures, or waive Vendor's obligation to comply with such change. The Vendor Information Security Officer's participation shall not be chargeable to DOR.

(b) **Vendor Information Security Officer Responsibilities.** Vendor shall designate a corporate officer ("**Information Security Officer**") who shall, at no cost or expense to DOR:

(i) Be responsible to ensure Vendor's initial and on-going compliance with the Security Policies and Procedures;

(ii) At least once every six (6) months, and at any other time requested by DOR, provide a written certification to DOR confirming Vendor's compliance with the Security Policies and Procedures; and

(iii) Upon DOR's request, including following any certification related to Vendor's compliance with the Security Policies and Procedures, meet with the DOR Chief Information Security Officer to discuss Vendor's

certification, the Security Policies and Procedures or other related matters.

**(c) Security Certifications.** Vendor represents and warrants to DOR that: (i) Vendor is certified under ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) ISO/IEC 27001:2005, Code of Practice for Information Security Management ("**ISO Security Standards**"); and (b) the TLSR Solution is certified and in full compliance with the [Payment Card Industry Data Security Standards \("\*\*PCI DSS\*\*"\)](#); and Vendor shall maintain such certifications on an on-going basis. Vendor shall provide DOR with a copy of such certifications upon request. Vendor shall provide DOR with full and complete copies of any ISO Security Standards, PCI DSS audits and review, and other security audits, reports and reviews, whether conducted internally by Vendor or through a Third Party, within thirty (30) days of receipt of such audits, reports and reviews, and, to the extent there are deficiencies cited and/or recommendations made, Vendor Information Security Officer, Vendor Executive Sponsor and other appropriate personnel from Vendor shall meet to review the deficiencies and recommendations and develop a plan of action to address such items. The implementation of any measures to address deficiencies and/or recommendations shall not be chargeable to DOR.

**1.4 Conflicts in Interpretation.** In resolving any inconsistencies relating to the Agreement, the following order of precedence shall be followed:

- (a)** First, and most senior, applicable Laws;
- (b)** Second, the terms contained in the main body of the Agreement;
- (c)** Third, the terms contained in any Schedule, Exhibit (except for Project Agreement and Contract Supplement) and/or Attachment to the Agreement, provided that no order of precedence shall be given among them;
- (d)** Fourth, the terms contained in the main body of a Project Agreement and/or Contract Supplement;
- (e)** Fifth, the terms contained in any Schedule, Exhibit and/or Attachment to a Project Agreement and/or Contract Supplement other than the Project Plan and any Statement of Work, provided that no order of precedence shall be given among them;
- (f)** Sixth, the Statement of Work document, if any, for the applicable Project Agreement and/or Contract Supplement;
- (g)** Seventh, the Joint Resource Plan, if any, for the applicable Project Agreement and/or Contract Supplement;
- (h)** Eighth, the Project Plan, if any, for the applicable Project Agreement and/or Contract Supplement;
- (i)** Ninth, the RFP Response; and



(j) Tenth, any Documentation (to the extent not included in one of the preceding subsections) in the order of precedence contained in the definition thereof.

All RFP Responses, including the TLSR RFP Response, are incorporated herein by reference and made a part of the Agreement. In addition, all Schedules, Attachments and Exhibits to the Agreement, including the following, are incorporated herein by reference and made a part of the Agreement:

Schedule 1.6	Definitions
Schedule 4.2.3	Certification Form
Schedule 5.3.2	Change Order Form
Schedule 7.1	Support and Maintenance Services
Attachment A	Multi-Vendor Sourcing Procedures
Attachment B	Support Standards and Support Credits
Schedule 8.1.2	Optional Software
Schedule 8.3.2	Service Rates
Schedule 8.4.1	Form of Vendor Invoice
Schedule 15.3.1	Insurance Coverages
Schedule 15.16	DOR Policies
Exhibit 1	TLSR Project Agreement
Exhibit 2	Subcontractor Confidentiality and Non-Disclosure Agreement
Exhibit 3	Third Party Confidentiality and Non-Disclosure Agreement
Exhibit 4	Source Code Escrow Agreement

**1.5 Effect of Certain Project Items.** Vendor has recommended that the parties use Vendor Methodologies to implement the TLSR Project, and it is expected that Vendor will promote the use of such methodologies in future projects. In connection with the use of such Vendor Methodologies, there may be terms, conditions, processes, protocols, workflows, assumptions or other features of the Vendor Methodologies that the parties are required to follow. The parties agree that using, following or implementing such Vendor Methodologies shall not alter or modify Vendor obligations under the Agreement. Without limiting the generality of the foregoing, to the extent a "project charter," a "project management plan," "project initiation plan," "test materials" or similar documents are developed for the TLSR Project or other project, such items must be developed consistent with the terms of the Agreement, and any deviation from the terms of the Agreement because of Vendor Methodologies or otherwise, will not be deemed to amend or modify the terms of the Agreement, including any Project Agreement or Contract Supplement, or any Statement of Work, and the parties expressly disclaim that such changes amend such documents through course of dealing, by operation of law or otherwise.

**1.6 Definitions and Construction.** Capitalized terms used herein shall have the meanings ascribed to them in **Schedule 1.6**, or in any other Schedule, Exhibit or Attachment. Any project-specific definitions, if any, shall be included in the applicable Project Agreement or Contract Supplement. The words "include", "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation". Any reference herein to a particular Article or Section number (e.g., "**Article 7**" or "**Section 7.1**"), shall be deemed a reference to all Sections of the Agreement that bear sub-numbers to the number of the referenced in the Article or Section (e.g., a reference to **Article 9**

includes **Section 9.1** through **9.16**, and a reference to **Section 9.1** includes reference to **Sections 9.1.1, 9.1.2, etc.**). The terms "hereof," "hereunder," "herein" and words of similar import will refer to the Agreement as a whole and not to any particular provision of the Agreement. Definitions in the Agreement apply equally to the singular and plural forms of the defined terms. Unless otherwise expressly specified, such as in the TLSR Statement of Work where the reference to the Review Period is stated as business days, all references to "days" without any designation of "calendar" or "business" will be deemed to be references to calendar days and not business days. All references to "business days" shall mean Monday through Friday, excluding Holidays. When calculating the time period before which, within which or following which any act is to be done or step taken pursuant to the Agreement, the date that is referenced in calculating such period will be excluded (for example, if an action is to be taken within two (2) days of a triggering event and such event occurs on a Tuesday then the action must be taken by Thursday). If the last day of a business day period is a non-business day, the period in question will end on the next succeeding business day.

**1.7 Vendor Agreements.** Following the Effective Date, if Vendor acquires a new Affiliate and such new Affiliate is a party to one (1) or more agreements with DOR or any other agency of the state of Washington (each a "**New Affiliate Agreement**"), DOR has the right, but not the obligation, to subject the products, software and services set forth in the New Affiliate Agreement ("**New Affiliate Agreement Products and Services**") to the terms of the Agreement, as set forth herein. Within thirty (30) days following DOR's written notice to Vendor that the New Affiliate Agreement Products and Services will be subject to the terms of the Agreement, DOR and Vendor shall amend **Schedule 1.6** to add such New Affiliate Agreement Products and Services and remaining and on-going costs and charges related thereto and such New Affiliate Agreement Products and Services shall be subject in all respects to the terms of the Agreement as though such Pre-Existing Contract were originally provided to DOR by Vendor under the Agreement.

## **ARTICLE 2**

### **PROJECT AGREEMENTS AND CONTRACT SUPPLEMENTS**

DOR shall license Software, and purchase Services and Equipment from Vendor pursuant to the terms of a Project Agreement for project-related initiatives (a "**Project Agreement**"), and a contract supplement for non-project related initiatives (a "**Contract Supplement**"). The TLSR Project Agreement is attached as **Exhibit 1**. All future Project Agreements developed by the parties shall be substantially in the same form and format as the TLSR Project Agreement, and, to the extent applicable, Contract Supplements, and future Project Agreements and Contract Supplements shall be consistent with the terms and conditions contained in the Agreement, be subject to all applicable Washington state laws and policies related to competitive procurement (including RCW 39.26.120), and include, as applicable, the following items:

- (a)** A list of all Software, Services and Equipment;
- (b)** Complete pricing information for the Software (including any Support and Maintenance Services Fees for the Software), Services and Equipment;
- (c)** A Statement of Work, Project Plan and Joint Resource Plan, including a detailed description of all Deliverables;

- (d) A list of Key Personnel;
- (e) The Approved Equipment Configuration for the Solution and any new or additional Performance Standards;
- (f) Any Software-specific license terms or Support and Maintenance Services terms; and
- (j) Any other Solution-specific terms and conditions.

Each Project Agreement and Contract Supplement shall require a work authorization, duly authorized and signed by the DOR Project Director, or her or his designee, in order to create a binding obligation on DOR.

### **ARTICLE 3**

#### **SOFTWARE, DELIVERABLES AND TOOLS AND UTILITIES**

##### **3.1 Software License**

**3.1.1 Grant of License.** Subject to the further terms and conditions of the Agreement, Vendor grants to DOR a perpetual, non-exclusive, non-transferable (except as permitted under the terms set forth in **Section 15.12**), unlimited use, user and user type in connection with its business operations, non-assessable, irrevocable (except as provided in the last paragraph of **Section 10.3**), worldwide, fully-paid (once all Software License Fees relating to the particular Software item have been paid), multi-site and Enterprise-Wide (except to the extent otherwise set forth in a Project Agreement or Contract Supplement) license for DOR and their Authorized Users to: (a) use the Software and the Documentation; (b) at no additional Software License Fee, to transfer and operate the Software on a different operating system and/or on different equipment; (c) make as many production and non-production copies of the Software and Documentation as DOR deems necessary for production and non-production purposes, including testing, disaster recovery, backup, training and education, development and archiving; and (d) adapt the Software and combine the Software with Third Party Software. For purposes of the Agreement and without limiting the generality of the foregoing, the term "**Enterprise-Wide**" shall mean the right to use the Software across the entire spectrum of business and operational activities involving DOR, now and in the future, directly or indirectly, including any and all growth of DOR.

**3.1.2 Construction and Interpretation of License and Right to Use Terms.** Vendor acknowledges that the intent of the scope of the Software license is to make DOR's rights to use the Software as broad as possible and, accordingly, the language in **Section 3.1.1** shall not be interpreted strictly or narrowly in favor of Vendor. Furthermore, in the event Vendor develops future limitations, qualifications and/or restrictions in how it licenses the Software to its customers, such future limitations, qualifications and/or restrictions shall have no effect on the scope of the Software license granted herein to DOR, and Vendor expressly disclaims the right to claim otherwise.

**3.1.3 Restrictions.** Other than the rights granted to DOR herein, no Intellectual Property Rights to the Software are transferred to DOR under the Agreement. DOR

shall not disassemble, reverse compile, reverse engineer or otherwise translate the Software; provided, however, that DOR shall have the right to disassemble, reverse compile, reverse engineer or otherwise translate the Software for purposes of creating interoperable computer programs.

**3.1.4 Freedom of Use.** Vendor understands that DOR may provide information processing services to other users that are Agencies of the State and other tax-supported entities. Vendor further understands that DOR or other users that are Agencies of the State and other tax-supported entities may provide services to the public through Internet applications. A Solution may be used in the delivery of these services. Vendor acknowledges and agrees that such use of a Solution is permitted and acceptable.

### **3.2 Deliverables.**

**3.2.1 General.** As part of a Project Agreement, Contract Supplement, Change Order or other applicable document or request, Vendor may prepare and/or provide Deliverable(s) for DOR.

**3.2.2 Review and Certification of Deliverables.** Each Deliverable shall be in a form, format, and in such detail as is necessary to: (a) in the case of Deliverables in respect of which specifications have been developed, cause it to conform to such specifications; or (b) in the case of Deliverables in respect of which specifications have not been developed, considering the purpose of the Deliverable, cause it to be reasonably acceptable to DOR; and (c) and be of fit quality, including meeting any quality standards as may be set forth in a Project Agreement or Contract Supplement (the applicable acceptance criteria for a Deliverable under the foregoing subsections shall constitute the "**Certification Criteria**" for the purposes of this Section). Prior to delivery to DOR, Vendor shall perform a systematic review of each Deliverable and shall, at the time of delivery to DOR, confirm in writing that the Deliverable conforms to the Certification Criteria. Following receipt of the applicable Deliverable and within the review period that is applicable to the Deliverable (or if none is specified, then within a reasonable period of time) (the "**Review Period**"), DOR shall review the Deliverable. If the Deliverable does not conform to its Certification Criteria, DOR promptly will notify Vendor of the deficiencies, but no later than within the Review Period, and Vendor promptly will modify the Deliverable and resubmit it to DOR for its review. The process described above will repeat until the Deliverable conforms to its Certification Criteria, and once this condition is met the Deliverable will be certified by DOR. To the extent the failure of the Deliverable to conform to the Certification Criteria was caused by Vendor, Vendor shall perform its obligations relating thereto without additional cost or expense to DOR. The parties acknowledge that certain Deliverables, such as design and configuration documents, will be subject to further activities, such as unit, systems and integration and user acceptance testing.

If, upon testing or other confirmation process, a Deliverable that was previously certified does not meet the intended functionality due to a Vendor error or design flaw, then the corrections required will be provided by Vendor pursuant to a no cost Change Order. If the previously certified Deliverable does not meet the intended functionality due to a change in DOR's requirements or a DOR error in communicating its requirements, then

any correction shall be subject to a chargeable Change Order. Any extensions of time permitted by DOR where the Certification Criteria are not met does not waive any rights or remedies DOR has with respect to an Event of Default for failure of Vendor to meet a Critical Milestone Due Date.

If there is substantial but not complete conformance to the Certification Criteria and Vendor wants DOR to partially certify the Deliverable, Vendor shall make a request for partial certification and accompanying such request shall be a plan to complete the Deliverable and the timeframe therefor. DOR will evaluate any such request but shall not be required to agree to partial certification. If DOR agrees to a partial certification, the Certification Form to be signed shall specify that the Deliverable is being partially certified, and the form must have attached an agreed to "Compliance Plan" on how the remaining components of the Deliverable will be completed. If there is partial certification, DOR may agree, but shall not be required as a condition thereof, to make a partial payment against such certification, and any such partial payment shall require an amendment to the payment terms under a Project Agreement or Contract Supplement to be effective against DOR.

**3.2.3 Certification Form.** Upon accepting (or partial certification as provided above) any Deliverable submitted by Vendor, DOR shall provide Vendor with written acceptance of such Deliverable by the signing of the Certification Form set forth in **Schedule 3.2.3** by the DOR Project Manager, or his or her designee. For Deliverables that create a payment obligation, the additional signature of the DOR Executive Sponsor shall be required. No other form of certification, such as email communications, oral information or otherwise, shall be effective for purposes of certification, payment or otherwise, and shall not be effective against DOR.

#### **3.2.4 Ownership of Deliverables.**

**(a) Ownership of Non-Software Based Deliverables.** Subject to Vendor's rights under **Section 3.2.5**, DOR shall be and remain the sole and exclusive owner of any non-software-based Deliverables, such as designs, configuration outputs, test scripts, test data bases, workflow diagrams and schematics and reports developed by Vendor for or on behalf of DOR.

**(b) Ownership of Interface and Extension Deliverables.** Subject to Vendor's rights under **Section 3.2.5** and the further terms of this Section, all Interfaces and Extensions paid for by DOR and developed by Vendor shall be and remain the sole and exclusive property of DOR. If Vendor wants to make such Interfaces or Extensions available to any other customer, or wants to incorporate the Interface and/or Extension in its base software or service offering, then ownership of such item will transfer to Vendor upon written agreement by the parties that: (i) Vendor shall include the Support and Maintenance Services with respect to such items (whether or not such items were previously covered by Support and Maintenance Services); (ii) any Support and Maintenance Services Fees or other fees relating to such items separately paid by DOR shall be eliminated (*i.e.*, any separate charges shall be eliminated); (iii) DOR shall not be obligated to pay any license fees for such Interfaces or Extensions; and (iv) if the amount paid by DOR for such item exceeded Twenty Five Thousand Dollars (\$25,000), the par-

ties shall negotiate a recapture formula whereby DOR will be reimbursed by Vendor for the amounts paid by DOR in connection with such Interfaces or Extensions with the financial goal to have the amount paid reimbursed within a two (2) year period.

**(c) Work-For-Hire.** In developing a Deliverable that is owned by DOR, the parties agree that such ownership shall inure to the benefit of DOR from the date of the conception, creation or fixation of the Deliverable in a tangible medium of expression, as applicable, and that all newly created copyright aspects of such Deliverables shall be considered "works-made-for-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent such Deliverables, or any part thereof, are not considered "works-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Vendor shall be deemed to have expressly assigned to DOR all exclusive right, title and interest in and to such Deliverables without further consideration, and Vendor agrees to promptly execute all such documents as may be requested by DOR to evidence and/or perfect DOR's Intellectual Property Rights therein.

### **3.2.5 Pre-Existing and Independently Developed Intellectual Property.**

Each party (and/or its Third Party licensors) is and shall remain the owner of all right, title and interest in and to that party's Intellectual Property Rights that existed prior to the Effective Date and in and to that party's Intellectual Property Rights that may be independently developed by such party on or after the Effective Date.

**3.2.6 Support for Interfaces, Extensions and other Software-Based Deliverables.** For Interfaces, Extensions and other software-based Deliverables that are developed by Vendor pursuant to a Project Agreement, Contract Supplement or other ordering document, unless otherwise stated therein, Vendor shall provide Support and Maintenance Services for such Interfaces, Extensions and other software-based Deliverables as part of the fees paid under such Project Agreement, Contract Supplement, or shall be part of the Support and Maintenance Services fees (with no additional fees to be paid thereunder) if not otherwise specified. For new or additional Interfaces, Extensions and other software-based Deliverables that are not required to meet a DOR Business and Technical Requirement, Vendor shall include proposed Support and Maintenance Services Fees in connection with the Change Order process to enable DOR to determine whether it wants Vendor to provide Support and Maintenance Services for such Interfaces, Extensions and other software-based Deliverables, provided that such Support and Maintenance Services Fees cannot exceed twenty two percent (22%) of the development fees. Support and Maintenance Services for such Interfaces, Extensions and other software-based Deliverables shall include the obligation of Vendor to retrofit such Interface, Extension or other Deliverable to, and maintain the compatibility with, all Enhancements.

**3.2.7 Third-Party Agreements.** Any agreement entered into by Vendor and a Third Party in connection with Deliverables under the Agreement shall include the same terms as those appearing in **Section 3.2.4** to ensure that DOR obtains the same rights in the works generated under such Third Party agreement as those set forth in **Section 3.2.4**.

### **3.3 Interfaces.**

**3.3.1 Cooperation.** Vendor acknowledges that DOR is working with a number of Third Parties to develop, maintain and support various DOR systems and that it may be necessary to implement one (1) or more Interfaces between the Solution and such systems. Vendor shall cooperate and work with DOR and such Third Parties to implement and use standard Interfaces or develop and implement custom developed Interfaces, in accordance with the terms of **Section 3.2**, as necessary to allow information to pass from DOR's systems (including DOR's Third Party systems) to the Solution, and vice-versa. Such cooperation may include, among other things, Vendor's attendance at meetings with DOR personnel and/or Third Party vendors and making available to DOR and Third Party vendors the Documentation for the Interfaces. Vendor shall attend DOR-requested telephonic meetings (at no charge to DOR) upon two (2) business days' notice by DOR and DOR-requested in-person meetings at DOR (which in-person meetings will be chargeable to DOR if approved in advance), upon four (4) business days' notice by DOR.

**3.3.2 Delivery/Development of Interfaces; Interface Documentation.** In accordance with the terms set forth in the applicable Project Agreement or Contract Supplement, Vendor shall deliver and install at DOR the standard Interfaces identified in the applicable Project Agreement or Contract Supplement. If Vendor must develop a custom Interface, such Interface development shall be considered a Deliverable and developed in accordance with the terms set forth in **Section 3.2**. Prior to Project Completion under a Project Agreement or Contract Supplement, Vendor shall provide to DOR the Documentation for all Interfaces, including API documentation, record layouts, design documentation, functional specifications, technical specifications, data transformations and data aggregations for each and every Interface (both standard Interfaces and custom developed Interfaces). DOR's receipt of such Documentation shall in all instances be a condition of Project Completion, and DOR shall not be obligated to make and/or shall be excused from making any payment due to Vendor at Project Completion until all such Documentation is received and accepted by DOR. Prior to Project Completion, Vendor shall provide to DOR Documentation for all Enhancements to any Interfaces at no additional charge to DOR. After Project Completion, Vendor shall provide to DOR Documentation for Interface Enhancements as part of and pursuant to Vendor's Support and Maintenance Services obligations.

### **3.4 Documentation.**

**3.4.1 General.** For each component of a Solution, Vendor shall provide to DOR Documentation that is reasonably detailed and complete and that accurately describes the functional and operational characteristics of the Software. Vendor shall provide to DOR updated versions of all such Documentation as soon as reasonably practical following its release by Vendor, but in no event later than ten (10) business days following delivery of any Enhancements to DOR. Updated Documentation will be at least as detailed as the Documentation issued to DOR with any initial Software delivery. The date, version and/or release number of each and every item of Documentation that is applicable to a particular component of Software or Equipment will be specified in the applicable Project Agreement or Contract Supplement. For any Interfaces and Extensions and other software-based Deliverables, the Interface and Extension software shall internally document in the source code, instructions and pointers on how the Interface or Extension operates, and replicates such instructions and pointers in separate written Documentation. The level of detail re-

quired for Interface Documentation shall be sufficient to enable a reasonably skilled programmer to update and retrofit the Deliverable to future versions and releases of the Solution or other computer programs to which the Interface interfaces or Extension operates.

**3.4.2 Additional Documentation.** Vendor's Documentation shall include detailed user-level descriptions of the changes in a release and the impact of such changes, detailed, comprehensive and complete technical release notes that identify all changes in a release and/or Enhancement. Vendor agrees to continually work to improve and enhance the level of detail contained in its Documentation.

**3.5 Project Management, Performance and Other Tools, Utilities, Etc.** Vendor grants to DOR a royalty-free, perpetual license to all Vendor (or its Affiliate's)-owned utilities and tools used by Vendor to provide Services, and, to the extent such licenses are sub-licensable by Vendor to DOR, a license to Third Party-owned utilities and tools used by Vendor to provide Services, including all tools and utilities used by Vendor to provide project management, implementation, evaluation and operational, maintenance and support Services, and all tools and utilities used by Vendor to provide performance monitoring, testing, managing and support of the Software (collectively, "**Vendor Tools and Utilities**"), which Vendor Tools and Utilities shall be set forth in a Project Agreement or Contract Supplement. If Vendor has omitted any tools and utilities described above, such tools and utilities shall nonetheless be Vendor Tools and Utilities, the parties promptly shall update the Project Agreement or other appropriate documentation to reflect such omitted tools and utilities, and Vendor shall provide such tools and utilities to DOR in accordance with the above terms. If there are tools and utilities introduced in the future by Vendor then such tools and utilities shall be Vendor Tools and Utilities and Vendor shall make such tools and utilities available to DOR in accordance with and subject to the terms set forth in this Section. During the pendency of a project, Vendor shall provide training and education on the use of, and Knowledge transfer with respect to the Vendor Tools and Utilities. For so long as the Agreement is not terminated and Vendor is providing Support and Maintenance Services to DOR, Vendor shall provide updated versions and/or all new Vendor Tools and Utilities as such updated versions are available, all at no additional cost to DOR.

### **3.6 Source Code.**

**3.6.1 Source Code Escrow Agreement.** The Source Code and other Deposit Materials for all Software licensed to DOR hereunder shall be deposited in escrow to be located in the United States. The escrow deposits shall be subject to release, all in accordance with the terms and conditions of the Source Code Escrow Agreement. The Source Code Escrow Agreement is supplementary to the Agreement. Vendor shall make and cause to be made deposits of the Deposit Materials for the Source Code Escrow Agreement within thirty (30) days of the Effective Date. If Vendor fails to deposit all such Deposits within the initial thirty (30) day time period, and thereafter, within the time frames specified in the Source Code Escrow Agreement, provided such failure is not cured by Vendor within thirty (30) days following receipt of written notice of such failure, without limiting any other rights and remedies that may be available to DOR, DOR shall have the right to: (a) seek specific performance of the Deposit obligations in the Source Code Escrow Agreement, and Vendor hereby waives all defenses associated with such remedy; (b) withhold payment of any and all amounts then due or that may become due to Vendor or, if no fees are then due or will become due, then DOR shall be entitled to a



credit in the amount of One Thousand Dollars (\$1,000) per day until Vendor makes the deposits, which credit Vendor shall, at DOR's option, either pay directly to DOR or accrue and set-off against future amounts that will be payable; (c) obtain release of the Source Code and other Deposit Materials in accordance with the Source Code Escrow Agreement; and/or (d) terminate the Agreement in accordance with **Article 10.2**.

**3.6.2 Source Code License.** Upon any release of the Deposits to DOR under the Source Code Escrow Agreement, DOR shall have a perpetual, non-exclusive, non-transferable (except as permitted under the terms set forth in **Section 15.12**), unlimited user, non-assessable, irrevocable, worldwide, fully paid and multi-site license (and sublicense with respect to Third Party Software) either directly or through a Third Party retained by DOR, to use, modify, adapt, execute, compile and create derivative works of the Deposits for DOR's internal use in order to support and enable DOR's continued use of the Software. In addition, Vendor shall make available to DOR at the Services Rates the key programmers or authors of the Solution that are then employed by Vendor, and DOR agrees not to solicit for employment or retention such employees, for the purpose of facilitating DOR's installation and bringing up to operational status of the Solution from the Deposits. If Vendor fails or refuses to make its employees available to DOR on a timely basis, DOR shall be entitled to the judicial remedy of specific performance to require Vendor to provide resources, and Vendor shall not object in any such judicial proceeding to this form of remedy, it being acknowledged that damages would be an inadequate remedy with respect to DOR's continued use of the Solution. DOR shall not be deemed to be in violation of the non-solicitation terms of this Section under any of the following conditions: Vendor fails to make such employees employment status known to DOR; the employee initiates contact with DOR; general recruitment using a recruiter, social media, print media and the like, where the solicitation is non-targeted. Vendor acknowledges that DOR shall not be responsible for verifying any employment-related terms or conditions relating to Vendor's employees.

**3.7 Technical Assistance and Knowledge Transfer.** Vendor shall transfer any knowledge it possesses which is necessary for the day-to-day operation of the Solution to DOR employees and contractors designated by DOR so that DOR will be able to operate and support the Solution on a going forward basis ("**Knowledge**"). The transfer of Knowledge shall consist of Vendor instructing, educating and training DOR personnel with respect to the following, to the extent within Vendor's Knowledge:

(a) The Software, and all Interfaces between and among the Software and Third Party Software, including all APIs and other items as may be further described in a Statement of Work;

(b) Enhancements to the Software and Interfaces;

(c) All data files, file and data definitions and relationships, data definition specifications, data models, program and logic, interfaces, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts relating to the Software;

(d) All available maintenance and support tools, utilities, diagnostic programs and supporting programs utilized by Vendor in the support and maintenance of the Software, Interfaces and other Deliverables;

(e) Documentation;

(f) Security requirements and methodologies implemented under the terms of the Agreement to prevent or detect unauthorized access, and any networking security tools;

(g) Methodologies that address traffic management, workload balancing, segmentation, routing and overall network performance analysis;

(h) The installation/maintenance of tools to support network performance analysis;

(i) Management and troubleshooting, including how to install and utilize management and remote troubleshooting tools;

(j) Maximizing the use of the Software, Interfaces and other Deliverables to perform key operational functions, including data backups, program downloads and security checks and how to automate such functions to minimize manual intervention; and

(k) Any and all updated, changed or revised policies, practices, procedures, processes and/or techniques with respect to the Knowledge previously transferred to DOR hereunder.

If and when the Deposit Materials are released to DOR, Vendor shall cooperate with and assist DOR in the transfer of Knowledge and in such other aspects of the Software or its operation as may be reasonably necessary to facilitate DOR's understanding and use of the Deposit Materials.

### **3.8 DOR Participation in Product Development.**

**3.8.1 Advisory Council.** Vendor shall permit DOR to participate on Vendor's advisory or other councils and committees, including any of its "Technical Design Workshops" or similar advisory groups. If Vendor has any councils, committees, retreats, "Technical Design Workshop" or other similar forums in which Vendor's top tier customers are entitled to participate, DOR shall be granted participation rights on no less favorable terms as Vendor's other top tier customers.

**3.8.2 Product Roadmaps.** Vendor shall provide DOR with its internal product roadmap for the Software and other products that are of interest to DOR (the "**Product Roadmap**"). The initial Product Roadmap shall be attached to the TLSR Project Agreement or Contract Supplement, and each Product Roadmap thereafter shall contain substantially the same detail and content as the initial Product Roadmap and be provided to DOR whenever Vendor makes any significant change to the roadmap.

**3.8.3 Early Adopter Status.** From time-to-time, Vendor allows certain customers to become "early adopters" of new, improved and/or emerging software products

("Emerging Products"). Vendor shall advise DOR of any Emerging Products that relate to the Software and, as appropriate, other Vendor products. DOR shall have the right to become an early adopter of any such Emerging Products, in which event the parties shall develop a Project Agreement or Contract Supplement that shall address, as appropriate: (a) fees, if any, to be paid to Vendor; (b) implementation, training, support and other related services associated with installing and operating the Emerging Product; and/or (c) any additional equipment required, on a loaner or other basis, to operate the Emerging Product.

**3.8.4 Development Participation.** Vendor will afford DOR the ability to directly participate in the development of future features and functionality of the Software and other software products of Vendor that are of interest to DOR through the hosting of one-on-one development meetings ("**Development Meetings**"). Vendor agrees that such Development Meetings will include discussion of the development phase of a subsequent release or version of the Software and the development phase of a new product, as well as the timing for freezing the developments for the release, version or new product, and the cutoff date for reviewing new developments for the release, version or new product. Vendor will provide DOR with written notice of any features and functionality that are planned in new releases and versions generally within thirty (30) days, but no later than sixty (60) days, after Vendor first identifies such for a particular release or version ("**Planned Features and Functionality**"). During the Development Meetings, DOR may request that Vendor provide new and additional features and functionality in a future release or version or new product. Vendor will review, consider and respond in writing to such DOR requests for inclusion into new releases, versions and new products within thirty (30) days or other mutually agreed timeframe of its receipt of such request. Vendor shall provide DOR with prior written notice if Vendor determines to remove any particular feature or functionality as a Planned Feature or Functionality. Vendor shall retain the sole right and discretion over the development and timing of Planned Features and Functionality and other Enhancements to be included in the Solution. Development Meetings shall be conducted at DOR's request but at a time mutually convenient for both parties and can be held, at DOR's election, in person with key Vendor developer personnel at Vendor's primary software development facilities for the Software.

## **ARTICLE 4**

### **EQUIPMENT**

The following terms and conditions shall apply to the sale of Equipment, if any, from Vendor to DOR.

**4.1 Sale of Equipment.** Subject to the terms and conditions the Agreement, Vendor shall sell to DOR and DOR agrees to purchase from Vendor, equipment containing the specifications and individual components set forth in the applicable Project Agreement or Contract Supplement and any and all related Documentation. Documentation shall be of professional print quality, one hundred percent (100%) legible and contain detailed information for accurate fault diagnosis and repair. Pursuant to such sale, Vendor shall, upon payment in full therefor by DOR, provide DOR with a bill of sale under which Vendor shall transfer title to the Equipment free and clear of any and all liens, encumbrances and charges, and shall represent and warrant in such bill of sale that the Equipment and any components thereof are new and not used, not discontinued or then planned to be discontinued and contain no replacement parts except as

otherwise specified in the Agreement. Modified versions of regular catalog equipment or special equipment shall be detailed as such and shall require prior written approval by the DOR Project Director before such modified equipment can be considered Equipment.

**4.2 Certification of Approved Equipment Configuration.** To the extent DOR elects to purchase its own equipment for use of the Solution, DOR shall be responsible for such equipment installation and any firmware updates. Upon DOR's completion of the installation, DOR shall notify Vendor and DOR will provide access to the DOR (or its designee's) facility for purposes of certifying the equipment for purposes of approving the Approved Equipment Configuration. If Vendor is not able to certify compliance, then Vendor shall provide DOR with written corrections and the basis therefore, and DOR shall remedy the exceptions and the process shall repeat until Vendor is able to certify.

### **4.3 Delivery of Equipment.**

**4.3.1 Delivery Costs; Changes in Delivery Location.** Vendor shall cause the Equipment to be delivered to a DOR-designation location using the method of transportation required to meet the delivery date(s) specified therein. Equipment shall be delivered between 9:00 a.m. and 3:00 p.m. Pacific Time, Monday through Friday, excluding Holidays. Vendor shall notify DOR in writing at least five (5) business days prior to the actual date of delivery of the Equipment. Equipment is to be transported in its proper rack, if applicable, and shall be properly protected to ensure electrical and mechanical operability and appearance. Equipment shall be enclosed in a semi-transparent, ESD-rated plastic cover to prevent damage to the Equipment from the weather, dust, dirt and induced voltages, and such packaging shall be clearly marked to indicate DOR-designated delivery location. If Vendor wants to use a staging site or area, Vendor must receive prior written approval from the DOR Project Director before using any such storage or staging area. Equipment shall in no event be left or dropped off at any DOR-designated location loading dock, and delivery will not have occurred until the Equipment is delivered to the applicable DOR-designated location. All costs associated with delivery of the Equipment to the DOR-designated location (freight, rigging and insurance) shall be included in the fees paid under the Project Agreement or Contract Supplement to Vendor and not charged in a separately issued invoice. All Equipment shall be subject to the testing and acceptance procedures set forth in **Section 4.6**.

**4.3.2 Delivery Delays Requested by DOR.** Unless otherwise agreed by the parties, upon ten (10) days' prior written notice to Vendor and prior to the scheduled Equipment shipment date, DOR shall have the right to suspend or reschedule delivery of any Equipment at no cost or expense to DOR; provided, however, that DOR shall reimburse Vendor for any reasonable, actual and documented warehousing or other similar expenses incurred by Vendor as a result of a delivery suspension that continues for more than ninety (90) days. If DOR suspends or reschedules any Equipment delivery date as provided herein less than ten (10) days before the originally scheduled shipment date for the applicable Equipment, Vendor shall accommodate such request, and DOR shall reimburse Vendor for any reasonable, actual and documented warehousing or other similar expenses incurred by Vendor as a result of such suspension or rescheduling.

**4.3.3 On-Site Receipt of Equipment.** At the request of DOR, Vendor personnel will be on-site at the DOR-designated location at the time the Equipment is delivered.

Such personnel will receive, unpack and inventory the Equipment and inspect such Equipment for damage. Vendor will report to DOR and resolve all shipping errors, inventory discrepancies and damaged or defective materials. Receiving and unpacking shall be performed in a staging area previously designated for the storage and unpacking of Equipment. Such area will be selected based on a location that minimizes movement of material and personnel through the DOR-designated facility. Vendor shall utilize materials such as plywood or masonite as necessary to prevent heavy objects from damaging floors, walls and doors. If requested by DOR or its facility provider, Vendor shall perform general cleaning of the installation area (e.g., clearing floors of debris, packing material, etc.) on a regular basis throughout the installation period. Rubbish shall be disposed of at Vendor's expense and in compliance with local requirements and DOR Policies. If Vendor fails to maintain and clean the facility in accordance with this Section, DOR shall have the right to invoice Vendor for all costs and expenses related to such cleaning, and such invoices shall be due and payable within fourteen (14) days following the date of the invoice. At its option, DOR shall have the right to set off any such costs and expenses against any amounts due or to become due to Vendor.

**4.4 Title; Risk of Loss.** Title to the Equipment shall remain vested in and all risk of damage and/or loss of Equipment shall be upon Vendor until the applicable Equipment for each Phase has achieved Phase Certification; provided, however, that such title transfer shall not constitute a waiver of any acceptance rights and remedies that may be available to DOR under the Agreement, and provided further that Vendor shall at all times remain responsible for any damages associated with such Equipment that are based upon the fault or negligence of any Vendor employee, agent and/or subcontractor. Upon DOR's receipt of the bill of sale for such Equipment, legal title in and risk of loss or damage to such Equipment shall pass to DOR.

**4.5 New Equipment; Substitutions.** All Equipment shall be new and shall not contain any replacement or refurbished parts or components. Vendor may be permitted to temporarily substitute any Equipment, or component thereof, if all of the following conditions are met: (a) the substitute equipment, or component thereof, is equivalent or better in form, fit, function, capacity and performance than the ordered Equipment, or component thereof; (b) Vendor is unable to meet the delivery requirements of DOR in the absence of such substitution; (c) Vendor provides reasonable prior written notice of the substitution to DOR; and (d) DOR consents in writing to the proposed substitution. If Vendor substitutes any Equipment, or component thereof, as described herein, the cost of installation and removal of such substitute Equipment shall be borne solely by Vendor. Title to and risk of loss for the substitute Equipment, unless accepted by DOR as a permanent substitution, shall at all times remain with Vendor.

#### **4.6 Equipment Testing.**

**4.6.1 Pre-Shipment Factory Testing.** At Vendor's sole expense, Vendor shall cause the Equipment to be configured, assembled and tested prior to installation at the DOR-designated location.

**4.6.2 On-Site Equipment Testing.** Upon delivery of any item of Equipment to the DOR-designated location, Vendor shall upload the latest software releases and then test the Equipment components (including the related operating system software) in accordance with the applicable Equipment manufacturer's standard diagnostic procedures to verify and confirm that the Equipment components (including the related operating

system software) operate in accordance with such manufacturer's most current specifications and the Documentation. If any non-conformities or other Defects are discovered during Equipment testing, Vendor promptly shall correct such non-conformities. For equipment purchased by DOR from a Third Party, DOR shall be responsible for the testing of the equipment and will provide Vendor with notice when it has completed its testing. Thereafter, Vendor shall perform such reviews of DOR's equipment to enable Vendor to certify the configurations, and if Vendor cannot so certify, provide written notice of any additional items or components needed for certification. This process shall continue until Vendor is able to certify DOR's equipment for purposes of software loading, and upon such certification shall sign and deliver the Certification Form to DOR.

**4.7 Equipment Maintenance.** Vendor shall provide Equipment Maintenance in accordance with the terms of the Contract Supplement or other ordering document accompanying the purchase of the Equipment.

**4.8 Equipment Inventory.** Thirty (30) days prior to the cutover of the Solution, Vendor shall develop and deliver to DOR in electronic form a detailed, DOR-specific inventory of all Equipment that minimally includes: (a) a list of all Equipment, including the Equipment model, manufacturer and serial number; (b) the location of all such Equipment; (c) the version of the operating system software installed on the Equipment; (d) a list of all patches installed on the Equipment; and (e) a list of any Documentation (e.g., user guides, specifications, and end-user support manuals) made available by the Equipment manufacturer and/or Vendor relating to the use of the Equipment (the "**Equipment Inventory**"). Vendor shall maintain and continuously update the Equipment Inventory to reflect changes in its contents, all of which updates shall be made in a manner that causes them to be reasonably identifiable by DOR. The Equipment Inventory shall be accessible to and capable of being downloaded by DOR at all times via a Vendor-provided portal. On a monthly basis, and at any other time promptly following any change in the Equipment list or location, Vendor shall deliver a then-current copy of the Equipment Inventory to DOR in an electronic format. All Equipment shall be barcoded and scanned by Vendor for DOR and Vendor tracking purposes.

## **ARTICLE 5**

### **PROJECT AND IMPLEMENTATION SERVICES**

Vendor shall provide the Services as described in a Project Agreement or Contract Supplement, and when providing such Services shall comply with the further terms and conditions set forth in this Article.

**5.1 Project Management Services.** For projects in which Vendor is performing project management Services, Vendor shall act as the project manager and shall perform all customary duties of a project manager, including performing the day-to-day project management duties, managing the provision and coordination of the Services provided by Vendor, reporting on the progress of or delays involving Vendor and/or DOR, and managing to complete the project on-time and within the Fixed Fee or budget. Without limiting the generality of the foregoing, Vendor shall provide the following project management Services, which Services may be supplemented as specified in a Project Agreement.

**5.1.1 Project Status and Other Meetings.** On the dates and locations specified in the Statement of Work and/or Project Plan and other dates as reasonably re-

requested by DOR, the Vendor Project Director, the Vendor Project Manager(s), the DOR Project Director and applicable DOR Project Manager(s) and other appropriate representatives of the parties shall discuss the status of the project ("**Project Status Meetings**"). Project Status Meetings for a project shall be held with the frequency (e.g., weekly) and at the location (e.g., at DOR) as set forth in the applicable Project Agreement.

At least two (2) business days before each Project Status Meeting, Vendor shall create and distribute to all meeting participants, a meeting agenda, and send the Project Status Report electronically to DOR or make available to DOR on the web-based document management/collaboration site for the applicable project. At each Project Status Meeting, the parties shall review the Project Status Report and discuss any existing or newly discovered Issues, Risks and Defects, progress towards project goals, any proposed changes to Critical Milestone or Deliverables Due Dates and other Issues relevant to the project. Vendor shall keep minutes of the meetings and shall include such minutes in the next Project Status Report.

In addition, Vendor shall create, maintain, update and circulate to applicable personnel a separate schedule that identifies the time, place, location and participants for all Project Status Meetings, other status meetings, team meetings, executive briefings, steering committee meetings and other meetings relating to the project. For all Vendor-arranged or conducted meetings: (a) Vendor shall discuss and mutually agree with DOR on dates for meetings in advance with all key personnel from DOR who need to attend such meetings to avoid scheduling the meetings when there are scheduling conflicts, and conflicts of availability for key personnel of DOR; and (b) Vendor shall prepare all meeting materials and make them available to the meeting attendees on the web-based document management/collaboration site for the applicable project or as otherwise requested by DOR sufficiently in advance of the meeting to permit time for review by the recipients.

#### **5.1.2 Project Status Reporting Management, Reports and Feedback.**

(a) **General.** The Project Status Report shall conform to the form, format, frequency, quality standards, content structure, minimum data sets, nomenclature and other operational program management systems adopted by DOR, and be signed by the Vendor Project Director (or Vendor Project Manager if there is no Vendor Project Director) and include:

(i) Excerpts from project issue and risk logs based on escalation criteria as specified by DOR's approved processes;

(ii) Excerpts from project risks logs based on escalation criteria as specified by DOR's approved processes;

(iii) The project budget plan, both actual funds expended and those to be encumbered;

(iv) A separate section identifying the accomplishments and Issues and Defects encountered since the last Project Status Report, and suggestions and proposed actions for dealing with and resolving such Is-

sues and Defects, including identifying and explaining actual delays and expected delays, and the impact of such Due Date delays and expected delays, relating to the Statement of Work, Project Plan and Deliverable Due Dates and Critical Milestone Due Dates;

**(v)** A separate section identifying previously-reported Issues and Defects, the date such Issue or Defect was previously reported, and the action taken to address such Issues and Defects– if no action was taken by either party, Vendor shall identify which party was required to act and identify that such party did not take action;

**(vi)** The percent complete for each Deliverable, Critical Milestone and other milestones and the effort remaining and/or estimated number of hours required to complete each Deliverable, Critical Milestone and other milestones;

**(vii)** Thirty (30) and sixty (60) day forecasts identifying all the activities and tasks and estimated number of hours required of the project teams and the expected Deliverables and other outputs, which forecasts must be consistent with the timeframes set forth in the Project Plan;

**(viii)** A cumulative summary and status of each Change Request, Change Response and Change Order, and a determination as to whether response time frame commitments are being met;

**(ix)** Compliance with Deliverable Due Dates and Critical Milestone Due Dates, and whether any Delay Credits, Quality Credits and/or incentives are incurred, earned back or due;

**(x)** Status of any requests for additional Vendor Personnel;

**(xi)** Status of any proposed changes to any other Schedules, Exhibits or Attachments to a Project Agreement or Contract Supplement, or any proposed amendments to the Agreement;

**(xii)** Tasks/activities accomplished and Deliverables completed since last Project Status Report, tasks/activities/Deliverables planned for completion/delivery between the issuance of the current Project Status Report and the next Project Status Report and the dependencies of such tasks/activities/Deliverables; and

**(xiii)** A list of the action items that arose from the last Project Status Meeting and the status of such items; and

**(ix)** Such other matters as one party may request of the other.

Issues, Risks and Defects that may arise shall be timely reported by one party to the other and logged in the web-based document management/collaboration site for the applicable project. Vendor shall include in the Project Status Reports any



delays by DOR and/or Third Parties or other circumstances as well as any Issues and Defects that are reported by DOR to Vendor. For any delays caused by DOR (including any failures by DOR personnel to fulfill its responsibilities), Vendor shall identify the delay and/or the specific activity, task or subtask in the Project Plan that DOR has not completed on time. DOR shall have the right to assume that Vendor is not aware of any Issues, Risks and Defects unless Vendor specifically identifies such Issues, Risks and Defects in the Project Status Reports.

No Issues, Risks or Defects shall be deleted or removed from the Project Status Report, issue and risk log or defect log, respectively, until such Issue or Risk or Defect has been resolved to DOR's reasonable satisfaction and DOR agrees to remove the Issue, Risk or Defect from the Project Status Report, issue and risk log or defect log, as applicable.

**(b) Feedback and Updates.** DOR shall have the right, but not the obligation, to provide feedback and comment on any Project Status Report provided by Vendor. If DOR provides written feedback and comment to a Project Status Report, Vendor shall incorporate into and address such feedback and comment in the next Project Status Report.

**5.1.3 Issues and Risks Management.** Vendor shall use the issue and risk log and issue and risk management methodology as directed by DOR. Vendor shall identify and report on all Issues and Risks, whether such Issues and/or Risks are identified by Vendor or DOR, which arise in a project. Without limiting the generality of the foregoing, Vendor shall:

**(a)** Populate the issues and risk log as soon as Vendor or DOR identifies an Issue or Risk;

**(b)** For each Issue and Risk identified, propose to DOR a mitigation plan to eliminate or mitigate the Issue and/or Risk, and upon approval, Vendor shall include the mitigation plan in the issues and risk log;

**(c)** Monitor all outstanding Issues and Risks, and report on whether the previously-approved mitigation efforts have been or are being undertaken and then assess whether the mitigation efforts are successful or need further revision; and

**(d)** Provide the current, updated issues and risk log to the DOR Project Director on no less than a weekly basis, and such updated log shall be included with the Project Status Report.

**5.1.4 Defects Management.** The defect log tool and defect management methodology shall be identified in each Project Agreement, and Vendor shall use such tool and methodology to provide defect management Services. . Without limiting the generality of the foregoing, Vendor shall:

(a) Populate the defect log as soon as Vendor or DOR identifies a Defect and prior to the certification of any Critical Milestone; to the extent the Vendor's tool is used for the defect log, Vendor shall provide DOR with the ability to directly input Defects;

(b) For each Defect identified, propose to DOR a corrective/mitigation plan to eliminate or mitigate the Defect, and upon approval by DOR, Vendor shall include the corrective/mitigation plan in the defect log;

(c) Monitor all outstanding Defects, work with Vendor's development resources and report on whether the previously-approved corrective/mitigation efforts have been or are being undertaken and then assess whether the corrective/mitigation efforts are successful or need further revision; and

(d) Provide the current, updated defect log to the DOR Project Director on demand as well as on a weekly basis, and such updated defect log shall be included with the Project Status Report.

**5.1.5 Financial Status Management.** DOR may create a project budget for use in managing a project. If DOR develops a project budget, Vendor will provide data inputs during the project as required to populate such project budget based on Deliverables, Critical Milestones and milestones.

**5.1.6 Communications Plan.** Each Project Agreement shall include a comprehensive communication plan which shall have at least two (2) separate components: one component targeted to communications to project team members and other internal constituents (internal); and a second component targeted to communications to broader DOR constituencies (external). The internal constituents plan will be developed by Vendor with DOR input, and the DOR constituencies plan will be developed by DOR with Vendor input. The communication plan shall include, as applicable:

(a) Developing communications standards, methods, formats and templates, with Vendor initially providing a variety of samples and templates with respect to internal and external constituencies for DOR's consideration;

(b) Developing an approach for Vendor and DOR communications to subcontractors;

(c) Developing a RACI (responsible, accountable, consulting and informed) matrix for communications;

(d) Communicating project status for both internal and external constituencies, including the preparation of a project newsletter as mutually agreed, but no less than quarterly during the pendency of a project;

(e) Communicating team member assignments for internal constituencies;

(f) Communicating upcoming tasks, meetings and Critical Milestones for internal constituencies;

(g) Communicating Issues, Risks and Defects for internal constituencies; and

(h) Schedule management for internal constituencies.

If the communications plan is to be created, the plan shall be a Deliverable, subject to the terms of **Section 3.2**.

#### **5.1.7 Document Management and Control.**

(a) **Form and Format.** In developing written documentation, Vendor shall present for DOR's approval, the form and format for documentation templates and conventions such that all project-related documentation retains a consistent look and feel.

(b) **Repository.** For each project, using the tool or utility as directed by DOR. Vendor shall comply with DOR's procedures and policies relating to the use, version control and updating of the repository, and shall ensure that any items uploaded into the repository are uploaded on a timely basis, are an accurate version of the documents to be uploaded, and use the taxonomy and naming conventions approved by DOR.

(c) **Security of Documents in Vendor's Control.** Vendor shall ensure the security of all project materials under Vendor's control in accordance with **Article 12** respecting Confidential Information and any applicable DOR Policies and Security Policies and Procedures, and as otherwise requested by DOR.

**5.1.8 Contract Compliance Meeting.** Vendor and DOR shall meet approximately monthly to discuss the parties' compliance with the Agreement and any pending Project Agreements and resolve any compliance Issues.

**5.1.9 Cooperation; Coordination with Other DOR Contractors.** DOR may involve Third Parties in the implementation of a project to assist DOR in the discharge of its responsibilities or otherwise perform activities and tasks not otherwise assigned to Vendor. Notwithstanding any such Third Party involvement, Vendor shall:

(a) Take the lead to facilitate communications with and work constructively and cooperatively with DOR's Third Parties involved in a project to ensure the Integration of numerous Third Party products with the Solution;

(b) Notify DOR immediately in writing and in a Project Status Report if any Third Party's performance (or failure to perform) has or may impact the project; and

(c) Work with the DOR Project Manager(s) to facilitate resolution of any Issues and Defects which develop relating to such Third Parties.

## **5.2 Implementation Services.**

**5.2.1 Statements of Work, Project Plans and Joint Resource Plans.** Each Project Agreement or Contract Supplement that involves Vendor's provision of implementation, development and/or other Services shall include the following documents, as further described below: A statement of work ("**Statement of Work**"), an integrated project schedule ("**Project Plan**") and joint resource plan ("**Joint Resource Plan**"), each of which shall be initially created jointly by the parties through an implementation planning study or other mutually agreed process and attached to the applicable Project Agreement or Contract Supplement. Thereafter, the Project Plan and Joint Resource Plan shall be updated and maintained by Vendor in accordance with the requirements in this Section and pursuant to applicable quality standards, and each updated Project Plan and Joint Resource Plan shall be subject to written approval by DOR. Additionally, changes to the Project Plan must be made in accordance with DOR's change control process. Changes to the Statement of Work shall occur through an amendment to the applicable Project Agreement or Contract Supplement.

**(a) Statement of Work.** The Statement of Work shall include, as applicable:

- (i)** A general description of the project;
- (ii)** A complete description of the scope and responsibilities of each of the parties;
- (iii)** A complete description of any assumptions applicable to the scope of services; any assumptions not identified cannot be later claimed by Vendor as an assumption in the project;
- (iv)** The Critical Milestones and entrance and exit (completion) criteria for determining whether a Critical Milestone has been successfully completed;
- (v)** Descriptions of Deliverables, including dependent Deliverables, in such detail as requested by DOR;
- (vi)** Payment milestones; and
- (vii)** Other mutually agreed terms.

**(b) Project Plan.** The Project Plan shall be integrated, meaning that the plan must cover all aspects of the project and include all Vendor (including any subcontractors) and DOR (or its Third Party)-only activities and tasks. The project tool used to develop the Project Plan will be agreed to by the parties prior to project initiation, and shall include, as applicable:

- (i)** Commencement and completion dates for the project;

(ii) All Critical Milestone and Deliverable events and Deliverable Due Dates and Critical Milestone Due Dates (with such Critical Milestones being identified by a different color and with the phrase "Critical Milestone" in the Project Plan document so that users can search on such term);

(iii) All other milestones, activities, tasks and subtasks, along with their dependencies;

(iv) For each grouping or subgrouping of Solution components, identify the activities that are related to other groupings or subgrouping of Solution components, including any activities that affect another grouping or subgrouping, e.g., design activities of one grouping of Solution components may need to be designed considering the implementation of another grouping or subgrouping, etc.;

(v) Sufficient description of all activities, tasks and subtasks (including DOR-only responsibilities) to be performed by Vendor, DOR or Third Party responsible for, and the location of, such activities, tasks and subtasks; and

(vi) The dates, duration and locations of Project Status Meetings and contract compliance meetings.

The initial Project Plan for a particular Project Agreement or Contract Supplement may be preliminary at the time such Project Agreement or Contract Supplement is developed, and accordingly, a more detailed Project Plan may need to be developed by the parties as the implementation of the project proceeds. Any such final Project Plan shall be subject to the terms of **Section 4.2**.

The status of any discussion regarding the change to a Deliverable Due Date or Critical Milestone Due Date shall be reflected in the next succeeding Project Status Report.

(c) **Joint Resource Plan.** The Joint Resource Plan shall identify the role, amount and timing of DOR and Vendor (including approved subcontractors) personnel assigned to a project, including the timeframe, whether the personnel will be on-site or offsite, and the overall time period during which Vendor implementation personnel are assigned to work on a project. As between the Joint Resource Plan and the Project Plan for a particular project, the resources set forth in the Joint Resource Plan shall control and conflicting or inconsistent resources reflected in the Project Plan. Vendor shall utilize DOR's tool for time tracking and report to DOR personnel utilization and the variance between actual personnel utilization and the Joint Resource Plan. Vendor shall manage and update the Joint Resource Plan as changes are made to such plan, and any updates to the plan must be submitted with the Project Status Report. Vendor shall not reduce any non-Key Personnel resources set forth in the plan without DOR's prior written consent, it being acknowledged by Vendor that a reduction in personnel may jeopardize Vendor's ability to meet Due Dates and/or the quality

standards for the project, unless Vendor can demonstrate to DOR's satisfaction that such impacts will not occur. Nothing contained herein shall prohibit Vendor from supplementing its personnel at any time. The updates to the Joint Resource Plan shall set forth any agreed to reductions in personnel, any vacancies in personnel positions along with Vendor's plan to fill such vacancies, any supplemental personnel being added by Vendor, whether such personnel have been previously assigned or planned to be assigned.

### **5.2.2 Training and Education.**

**(a) General.** Vendor shall provide to DOR training and education for a Solution pursuant to the terms set forth in the applicable Project Agreement or Contract Supplement. Each Project Agreement and Contract Supplement shall specifically name and detail the education and training courses to be provided by or through Vendor and shall provide other related information for such training and education courses, including the applicable class size, pricing and any restrictions and/or limitations in connection with such training and/or education. The timing and sequence of any training and education shall be incorporated into the Project Plan at such point in time or times where the training and education is appropriate and relevant to project activities. Training and education shall be provided at one or more locations as set forth in the Project Agreement or Contract Supplement.. At the conclusion of each class, Vendor shall provide each of the attendees with a survey to elicit responses as to the adequacy and sufficiency of the instructor, training materials, computerized facilities and other matters relevant to determine whether the class objectives were met and were otherwise satisfactory. Vendor shall compile the results and provide the results to the DOR Project Director or Project Manager, as applicable.

**(b) Re-Performance of Training Classes.** Using the responses from the surveys above, if a specific training course is not performed to DOR's reasonable satisfaction, whether because the instructor for the training course did not perform to DOR's reasonable satisfaction, the training materials supplied by Vendor were not relevant to DOR's environment and/or the training was otherwise not satisfactory to DOR, then at DOR's request, Vendor shall promptly re-perform, at no additional tuition cost to DOR, the class with a different instructor who is qualified to teach the subject matter and/or correct the deficiencies or lack of relevancy in the training materials. If Vendor disagrees with DOR's assessment, the matter shall be referred to the Executive Sponsors for resolution.

**5.2.3 Addressing Inadequate Personnel Planning or Availability of Personnel.** The parties acknowledge that inadequate personnel planning and/or availability of personnel can have a significant negative impact on the ability to meet Deliverable Due Dates and Critical Milestone Due Dates. Inadequate personnel planning can result from, among other things, DOR not hiring or having its personnel available when needed (due to personnel resignations, retirement or other reasons), Vendor not accurately representing the types or number of personnel needed by DOR to complete its tasks and activities, delays by DOR, and delays by Vendor that have the effect of requiring DOR to attempt to accomplish too many tasks in a compressed timeframe. If the lack of personnel needed to complete the tasks and activities for a given Critical Milestone is based on

or linked to Vendor delays (including Vendor not completing prior activities when required, providing Deliverables late or other delays, etc.), then Vendor shall identify such Issue in a Project Status Report and work with DOR to determine whether: (a) DOR personnel can be effectively reallocated in a manner that will not jeopardize the ability to meet other timeframes or obligations in the project (current or future); (b) timeframes for any particular task or activity, other than the timeframes for completing any stage of testing the Solution, can be accelerated; (c) if time frames (other than for testing) can be accelerated, whether it is prudent or consistent with industry practices to do so (if it is not prudent or consistent with industry practices, then DOR shall be under no obligation to agree to any such acceleration); or (d) there is any other impact on the project.

If Vendor was the cause of the delay (based on any of the above reasons or otherwise), then Vendor shall be responsible for the additional costs and expenses involved in either hiring additional DOR-personnel, providing additional Vendor personnel to accelerate performance, or both. If the reason for the need for additional DOR personnel is attributable to DOR, then DOR shall be responsible for such additional costs and expenses, and if the solution is additional Vendor personnel, DOR shall only be obligated to the extent a Change Order is signed by DOR.

**5.2.4 Implementation Delays.** A Critical Milestone will be achieved successfully when DOR verifies in writing that the activities, events and/or Deliverables that comprise such Critical Milestone have met all applicable acceptance criteria and DOR has signed the applicable Deliverables Certification Form. Subject to the further terms of this Section, if DOR reasonably determines that Vendor is likely to fail to meet a Critical Milestone Due Date or a Deliverable Due Date, or if Vendor already has failed to meet a Critical Milestone Due Date or Deliverable Due Date, then, in addition to any other rights or remedies that may be available to DOR, including the rights and remedies under **Article 10**:

**(a) Additional Personnel.** At DOR's option, Vendor shall provide to DOR, at no additional cost, additional Vendor personnel required or necessary to timely achieve the Deliverable Due Date and/or Critical Milestone Due Date, or, if Vendor has already failed to meet one (1) or more Deliverable Due Dates and/or Critical Milestone Due Dates, complete the Critical Milestone(s) or Deliverable(s) as soon as practicable, provided that any adjustment of a Critical Milestone Due Date shall not operate to adjust any future Critical Milestone Due Date unless specifically agreed to in writing by DOR; and

**(b) Delay Credits and Earn Back Rights.** To the extent Vendor's acts, omissions, failures and/or delays cause a failure to achieve a Critical Milestone on its original Critical Milestone Due Date (or an adjusted Critical Milestone Due Date), DOR shall be entitled to receive credits in the amounts and pursuant to the terms and conditions set forth in the applicable Project Agreement or Contract Supplement for each day that Vendor fails to timely achieve a Critical Milestone Due Date on the original missed Critical Milestone Due Date ("**Delay Credits**"). The parties agree that the Delay Credits represent a lower net Services fee to Vendor for not completing the implementation on time, and is not to be construed as a penalty or an exclusive remedy. If a Critical Milestone Due Date is reset pursuant to a mutually agreed Change Order, such reset Due Date shall not operate or be construed to automatically waive any Delay Credits unless DOR specifically

agrees in writing in connection with such reset Due Date that DOR waives the applicable Delay Credits. Vendor shall have the ability to earn back the Delay Credits associated with a Critical Milestone if the next succeeding Critical Milestone Due Date (on an unadjusted basis) is met. Delay Credits associated with Production Use and Project Completion cannot be earned back by Vendor.

DOR's acceptance of additional personnel or Delay Credits as provided in **Sections 5.2.3** or **5.2.4** shall not be construed or implied to limit or constitute a waiver of any of DOR's rights as provided in **Article 10**. Vendor shall not be obligated to provide additional personnel at no additional cost or to provide Delay Credits to DOR to the extent Vendor's failure to achieve any Critical Milestone is caused by DOR or its Third Party's delays or a Force Majeure Event that was not capable of being mitigated.

To the extent set forth in a Project Agreement, the parties may agree to economic incentives for completing Critical Milestones prior to the applicable Critical Milestone Due Date.

**5.2.5 Quality Standards.** In order to reduce the risk of project failure and to maximize the benefits of the Solution it is implementing, Vendor must provide quality personnel and produce quality, on-time Deliverables. In order to ensure quality, Vendor agrees to propose only quality personnel for projects, and provide quality Deliverables in accordance with a quality assurance plan and/or any additional quality standards that may be set forth in a Project Agreement or Contract Supplement. As part of meeting quality standards, Vendor further agrees to the following:

**5.2.5.1 Project Quality Reviews.**

**(a) By Vendor.** Vendor, through a separate, independent, internal audit group within Vendor's organization, shall conduct a quarterly internal project review for each DOR project, which shall, at a minimum, measure and assess Vendor's performance generally and against the quality standards set forth in the Project Agreement or Contract Supplement. Without limiting the foregoing, quality shall be assessed on the timeliness of the delivery of Vendor's project management, implementation, Extension development and training and education Services, the personnel Vendor has assigned to the activities and tasks and their on-time delivery of such Services. Vendor shall provide DOR with a full and complete copy of such review (*i.e.*, not a summary) within five (5) business days after the end of each such calendar quarter. If there are areas of improvement or deficiencies cited in an audit, within fifteen (15) business days following each such calendar quarter, Vendor shall develop and implement an action plan acceptable to DOR to address such items. Vendor shall report to DOR on its efforts to implement such action plan in the Project Status Reports.

**(b) By DOR.** A quality assurance assessment will be conducted monthly by an independent Third Party, as required by State policy, to ensure that project management standards, processes, and procedures are appropriate and correctly implemented to increase the probability of the project's success. The quality assurance assessment is a sys-



tematic approach that monitors, evaluates, and provides interactive feedback about the project's activities and ensures the project is properly managed. Vendor shall participate in the monthly quality reviews and cooperate with DOR and the independent Third Party, as applicable, to enable DOR to complete the assessment, including providing full and complete in-person access for on-site personnel and remote access for off-site personnel, all at no additional cost to DOR. If there are areas of improvement or deficiencies cited in the monthly assessment, the parties shall meet to review and develop a plan to address the quality assurance recommendations.

**5.2.5.2 Quality Credits and Incentives.** Quality credits and incentives for a project will be set forth in the applicable Project Agreement or Contract Supplement. The quality credits for the TLSR Project are set forth in the Quality Assurance Plan attached as **Appendix C** to the Statement of Work.

### **5.3 Change Order Procedures.**

**5.3.1 General.** Strict project management control processes and the documentation of changes to a Project Agreement or Contract Supplement and similar implementation items are all important components of project management discipline. Accordingly, with respect to any changes that will result in an out-of-scope activity, a change to a Deliverable Due Date or Critical Milestone Due Date, or a reduction in the scope of activities, a Change Order will be required pursuant to this Section and any additional change control processes as may be mutually agreed to by the parties. For purposes of the Agreement, an out-of-scope activity is an activity that is not identified or contemplated in the applicable Statement of Work or Project Plan, or otherwise addressed as part of the work to be performed in connection with a Project Agreement or Contract Supplement. Out-of-scope activities which substantially increase the scope of the original TLSR Project or substantially increase the value of the TLSR Project Agreement shall all be subject to all applicable Washington state laws and policies related to competitive procurement (including RCW 39.26.120(2)). Vendor acknowledges that a reduction in the scope of work will result in a credit to be provided to DOR that is in direct proportion to the size or amount of reduction in scope of work, and that such credit may be held and retained by DOR for future out-of-scope Change Orders or as a set off as provided for herein.

**5.3.2 Change Orders.** Change Orders shall be initiated by a change request ("**Change Request**") and can be initiated by either party. DOR and Vendor shall each bear their own costs in preparing and analyzing the Change Request and Change Response. The form of the Change Request is attached as **Schedule 5.3.2**.

**(a) DOR-Generated Change Requests.** Within three (3) business days following receipt of any DOR Change Request, Vendor shall acknowledge that it has received the Change Request and that the appropriate Vendor representative(s) are working on a response. Within ten (10) business days for a Change Request involving a request by DOR to change one (1) or more Deliverable Due Dates or Critical Milestone Due Dates and within seven (7) business days for all other Change Requests, following Vendor's receipt of such DOR

Change Request, Vendor shall update the Change Request form to include its response ("**Change Response**") describing in detail:

(i) Any additional Services to be performed and/or new components of the Solution and/or Equipment required as a result of the Change Request and/or Services, Equipment or components of the Solution that are no longer required as a result of the Change Request;

(ii) The effect, if any, that any such additional or deleted Services, component of the Solution and/or Equipment shall have on the Statement of Work and/or Project Plan;

(iii) The cost or savings associated with such additional or deleted Services, component of a Solution and/or Equipment; and

(iv) Any other information relating to the Change Request that may reasonably be requested by DOR.

If DOR accepts a Change Response, the parties shall finalize the Change Response form and once signed shall constitute a "**Change Order**." If DOR rejects such Change Response, Vendor shall proceed to fulfill its obligations as originally agreed under the Agreement and the applicable Project Agreement or Contract Supplement.

Compliance with the timeframes set forth herein are important to ensure that Issues that need to be solved with a Change Order are processed on a timely basis. Accordingly, if Vendor repeatedly fails to abide by the timeframes, or fails to process any Change Requests relating to Critical Milestone or Deliverable Due Dates in a manner that will or may cause significant delays, then DOR shall be entitled to withhold fifty percent (50%) of the fees due or that may become due to Vendor, or, if no fees are due or will become due, then DOR shall be entitled to a credit equal to One Thousand Dollars (\$1,000) per day (which credit Vendor shall, at DOR's option, either pay directly to DOR or accrue and set-off against future amounts that will be payable), until Vendor complies with the timeframes required herein.

(b) **Emergency Cost Estimates.** From time-to-time, DOR requires immediate high-level cost estimates in response to state legislative and other governmental requests for implementing new features as part of a Solution. Accordingly, Vendor shall provide high level cost estimate responses as soon as possible upon DOR's request, not to exceed two (2) hours.

(c) **Vendor-Generated Change Requests.** For Vendor-generated Change Requests, DOR shall review and evaluate such request and provide feedback to Vendor during the Project Status Meetings. To the extent such Change Request identifies an out-of-scope Service, additional value-added Services or other similar items, DOR shall not be obligated to provide a written response to such request.

**5.3.3 Special Provisions Relating to Change Orders for Changes to Deliverable Due Dates and Critical Milestone Due Dates.** Deliverable Due Dates and Critical Milestone Due Dates shall not be changed at any time prior to Project Completion under the applicable Project Agreement or Contract Supplement without the prior written consent of DOR and pursuant to an amendment to the applicable Project Agreement or Contract Supplement using the process described below:

**(a) Vendor-Proposed Changes.** If Vendor proposes a change in a Deliverable Due Date or Critical Milestone Due Date, it shall submit a Change Request along with a detailed explanation of the basis for the Change Request, an updated Project Plan reflecting all adjusted dates, including the adjusted Deliverable Due Date and/or Critical Milestone Due Date and, if there is an impact on the scope of Services, a revised Statement of Work (or portion thereof), highlighting the proposed text change and, if there is a proposed change in the fee, an updated fee and payment schedule. If the Change Request is due to a delay on the part of DOR, any Third Party or a Force Majeure Event, Vendor shall: (a) for a Force Majeure Event, identify the Force Majeure Event and explain what steps or measures Vendor took to mitigate the effect of the Force Majeure Event; (b) for a delay on the part of DOR or any of its Third Parties, specify in detail the failure or inaction by DOR or its Third Party, provided, however, if the reason there is a DOR or Third Party delay is that predecessor responsibilities of Vendor were not performed which resulted, in whole or in part, in the DOR or Third Party delay, Vendor shall not be entitled to claim a delay on the part of DOR or the Third Party. A Change Request is not complete, and nor shall DOR be required to review a Change Request without the foregoing revised documents. In addition, any delay by Vendor which results in a disruption to the allocation of personnel to be provided by DOR shall not be a basis for Vendor to claim delays on the part of DOR, and any such disruption to DOR personnel shall be identified in the Project Status Report. If the DOR Project Director disagrees that such Change Request is warranted, the matter shall be escalated to the Vendor Account Executive and the DOR Project Director, and then to the Executive Sponsors, if needed, for resolution. Based on the agreed to results of the Change Order process as described above, the parties shall memorialize such agreement in the form of an amendment to the applicable Project Agreement or Contract Supplement.

**(b) DOR-Proposed Changes.** If DOR proposes a change in a Deliverable Due Date or Critical Milestone Due Date, the parties shall meet to discuss the proposed date changes and Vendor shall prepare a Change Request along with the items referenced in **subsection (a)**.

**5.3.4 Administration of Change Orders.** The Vendor Project Manager and the DOR Project Director shall be authorized to administer the Change Order process set forth in this Section; provided that all proposed Change Orders must be approved in writing by the DOR Executive Sponsor, or his or her designee, in order to be effective against DOR.

## **5.4 Personnel.**

**5.4.1 DOR Personnel.** DOR will appoint a Project Director ("**DOR Project Director**") who shall be responsible for a project, and will appoint one or more Project Managers ("**DOR Project Manager(s)**") and other project leadership, including a Deputy Project Director, as determined by DOR who will be responsible for coordinating DOR's resources and personnel and have overall responsibility for ensuring DOR's performance of its responsibilities under the TLSR Project Agreement. The DOR Project Director and/or DOR Project Manager may designate other DOR personnel or agents as their designees, provided that any such designation to be effective as against DOR must be communicated in writing to Vendor.

**5.4.2 Vendor Personnel.** Vendor shall provide sufficient, qualified personnel to perform Vendor's obligations, including: (a) if necessary for the project given its size and/or complexity, a Project Director; (b) one or more Vendor Project Managers; and (c) such other key personnel as may be designated in the applicable Project Agreement or Contract Supplement (collectively referred to as the "**Key Personnel**"). All Key Personnel shall be available at locations specified in the applicable Project Plan and as otherwise reasonably requested by DOR. At DOR's request, Vendor shall provide DOR with a list of Vendor personnel, which list shall include professional qualifications for each person listed, specifying the persons qualified to be the Key Personnel. DOR shall have the opportunity to conduct telephone or in-person interviews of such Key Personnel candidates at no cost to DOR. DOR shall have the right to approve, in its sole discretion, all Key Personnel and other Vendor personnel assigned to a project. If DOR does not provide such approval, then Vendor shall not assign such personnel to provide Services to DOR, whether on-site or off-site.

**5.4.3 Experience of Vendor Personnel.** Key Personnel and other personnel assigned by Vendor to provide Services to DOR (other than administrative personnel) shall have the qualifications listed below. If Vendor wants to assign personnel to DOR's account that do not meet all of the following qualifications, such assignment shall require the prior written approval of DOR, which approval may be withheld in DOR's sole discretion. If DOR does not provide its prior written approval of such personnel, then Vendor shall not assign such personnel to provide Services to DOR, whether on-site or off-site.

Qualifications of Vendor personnel shall include:

**(a)** At least ten (10) years' experience in project management for project directors and managers (certification as a project management professional (PMP) is preferred), three (3) years' experience in project management for mid-level project personnel, and eighteen (18) months of experience for basic project personnel as an employee of Vendor;

**(b)** Specific experience with other customers in the Vendor Implementation Methodologies to be used in the project;

**(c)** Substantial experience in the government environment to the tasks assigned such personnel;

(d) Participation in on-time, on-budget, successful projects of similar size and scale in the same role and with the same responsibilities as such personnel has under the applicable Project Agreement or Contract Supplement;

(e) If applicable, certification in the technologies used in the project, including the specific release or version levels of software, to successfully complete the Services under the applicable Project Agreement or Contract Supplement;

(f) At least one (1) reference from a recent project of a similar size and scale stating that such personnel consistently met expectations and fulfilled their role and responsibilities effectively; and

(g) Eighteen (18) months experience in implementing or with the component of the Solution Module in which such personnel is providing Services.

**5.4.4 Removal of Vendor Personnel by DOR.** If DOR has concerns over any Vendor personnel assigned to a project and DOR believes that the problem is capable of being corrected, DOR shall bring such concerns to the attention of Vendor. Vendor shall have a period of seven (7) days following such disclosure to resolve any problems with respect to such person in a manner that is satisfactory to DOR. If Vendor is unable to resolve the problem within such seven (7) day period to DOR's satisfaction, then Vendor shall remove such person and provide a replacement as soon as reasonably possible thereafter (not to exceed seven (7) days for the Vendor Project Manager and for other personnel fourteen (14) days following the seven (7)-day correction period, unless a longer period of time is approved in writing by DOR), taking into consideration such person's duties and responsibilities. Nothing contained in this Section shall restrict DOR from immediately removing Vendor's personnel if Vendor's personnel is engaging in a manner that is unlawful, non-compliant with DOR Policies, or other exigent circumstances exist that require immediate removal.

**5.4.5 Removal/Reassignment by Vendor.** Except upon DOR's prior written consent, which consent may be withheld in DOR's sole discretion, Vendor shall not remove from a DOR project or temporarily reassign any Vendor personnel to another account until such time as such personnel have completed all of their assigned responsibilities under the Project Agreement or Contract Supplement. Vendor personnel will be deemed removed from the project if such personnel no longer is fulfilling the tasks assigned to such personnel, regardless of whether Vendor provides supplemental personnel to accomplish such task(s). The terms of this Section shall not apply if there is a termination of employment or a reason outside of Vendor's control such as a resignation, illness or promotion (except for a promotion if made to evade the terms of this Section).

**5.4.6 Transition.** If Vendor removes any personnel from DOR's account for any reason (whether permitted under the terms of the Agreement or otherwise) or if Vendor wants to replace or reassign any personnel, and either DOR consents to such replacement or reassignment, or DOR's consent to such replacement or reassignment is not required as provided in **Section 5.4.5**, then:

(a) Promptly (but in no event more than two (2) business days) following the date that Vendor knows any Vendor personnel will cease to be assigned to DOR's account to provide Services, Vendor shall provide written notice to DOR of the name and role of such Vendor personnel and the date that such Vendor personnel will cease to be assigned to DOR's account and a transition plan in accordance with this Section describing the transition of replacement personnel to replace the replaced personnel;

(b) The terms of **Section 5.4.2** with respect to DOR's right to select replacement personnel shall apply;

(c) The terms of **Section 5.4.3** shall apply; and

(d) The proposed replacement personnel shall possess comparable experience and training as the Vendor personnel to be replaced.

To the extent the replaced personnel remains employed by Vendor, the replacement personnel shall work with the replaced personnel during a mutually agreed transition period, the duration of which shall be determined based on the duties and responsibilities of the person actually to be replaced, and all costs and expenses associated with educating and training the replacement personnel shall be borne by Vendor. Additionally, following the transition period, the replaced personnel shall continue to be available by telephone to answer any project-related questions.

**5.4.7 Key Personnel Vacancies.** If there is a Vacancy in a Key Personnel position, DOR shall have the right to withhold any amounts due to Vendor under the Agreement until Vendor provides a qualified replacement as defined in **Section 5.4.6**, or if no fees are then due or will become due, then DOR shall be entitled to a credit in the amount of Two Thousand Dollars (\$2,000) per day, which credit Vendor shall, at DOR's option, either pay directly to DOR or accrue and set-off against future amounts that will be payable. In addition, a Vacancy in a Key Personnel position shall not be a basis for Vendor to claim any excused failure to meet a Deliverable Due Date and/or Critical Milestone Due Date.

**5.4.8 Vendor Personnel Listing.** Upon the commencement of any Project Agreement or Contract Supplement, Vendor shall provide DOR with a comprehensive written listing of all Vendor personnel providing Services (including employees, subcontractors, agents and management and upper management personnel in oversight roles) under such Project Agreement or Contract Supplement which shall include:

(a) An organizational chart and hierarchy diagram;

(b) Names of all such personnel;

(c) Titles of all such personnel;

(d) The roles and responsibilities of all such personnel;

(e) Contact information for all such personnel (e.g., address, e-mail, cell phone number, office phone number, etc.);

(f) Work location for all such personnel;

(g) Duration of assignment of such personnel (e.g., from and to dates, from and to milestones); and

(h) Percentage of allocation of all personnel (in the event that any Vendor personnel are not full-time on DOR's account).

Vendor shall maintain and update this listing as the information and/or personnel change during the course of an applicable Project Agreement or Contract Supplement.

**5.4.9 Background Checks.** For any personnel providing Services, Vendor shall have conducted, and such personnel shall have passed, a background check, which will include verification of the right to work in the United States. If there are any events or circumstances with an individual providing Services to DOR that would disqualify such person from passing Vendor's background check procedures, then Vendor shall alert DOR of such fact and remove such individual from DOR's account. DOR reserves the right to conduct additional background checks and/or require Vendor to augment its background check and screening procedures. Upon request by DOR, Vendor shall provide DOR with copies of the results of Vendor's background check.

## **5.5 Facilities.**

**5.5.1 Identification Credentials.** Each party shall have the right to require the other party's employees, agents, representatives and subcontractors to exhibit identification credentials issued by such party in order to access the other party's facilities.

**5.5.2 Facility Rules.** All Vendor employees, agents, representatives and subcontractors shall, while on DOR's premises, comply with all DOR Policies, copies of which shall be made available to Vendor upon request. Vendor shall ensure that any of its personnel performing work on DOR's premises, or accessing DOR's computer systems do so with DOR's advance permission and according to all applicable security and workplace-related DOR Policies, including the Security Policies and Procedures. Vendor shall not stop, delay or interfere with DOR's day-to-day operations without the prior written consent of an authorized DOR representative(s).

**5.5.3 Damage to Buildings, Grounds or Other Furnishings.** Vendor shall be responsible for any damages or injury to the buildings, grounds, physical property or other furnishings of the State by Vendor's employees, representatives and/or agents. Vendor shall report the occurrence of any such damages or injuries to the DOR building/facilities manager.

**5.5.4 Collocation and Workstation Fees.** As set forth in a Project Agreement, Contract Supplement or otherwise as directed by DOR, Vendor Key Personnel and other personnel as directed by DOR, including permitted subcontractors, will co-locate with DOR personnel, and any DOR subcontractors, in DOR facilities. Co-located

personnel will be provided a desk, storage cabinet, if elected by DOR, a laptop, and connection to the Internet. To the extent DOR permits Vendor personnel to use their own equipment (e.g., laptops, PDAs, etc.), such equipment shall be subject to and require compliance with DOR Security Policies and Procedures.

## **ARTICLE 6**

### **TESTING AND ACCEPTANCE**

Implementation of a Solution may be accomplished on a component-by-component or Software Module-by-Software Module basis, a grouping of Solution components or Software Modules basis and/or in "**Phases**," as specified in a Project Agreement or Contract Supplement. The terms and conditions relating to Equipment testing are set forth in **Section 4.4**.

**6.1 Project Agreements and Contract Supplements.** Project Agreements and Contract Supplements may set forth testing processes and procedures that are in addition to the processes and procedures described herein.

**6.2 Test Plans.** Vendor shall lead the work effort to develop a specific test plan ("**Test Plan**") for each Solution. Vendor will identify previously developed test materials in Vendor's possession that may be useful in the testing of the Solution. Vendor shall tailor those materials into DOR-specific test materials, including test plan models, test scripts, test scenarios and test databases (collectively, "**Test Materials**"). The Test Materials shall be subject to the certification process set forth in **Section 4.2**, and Vendor shall ensure that the Test Materials are sufficiently comprehensive to confirm the operation of the Solution in accordance with the DOR Business and Technical Requirements. If DOR determines that the Test Materials are not sufficient, Vendor shall revise the Test Materials and resubmit them to DOR for its review and comment. This process shall continue until the Test Materials are accepted by DOR.

As part of developing the Test Plan, Vendor will develop the criteria for commencing and concluding ("entrance" and "exit" criteria) the various activities within Pre-Live Testing as described below, all as are required to test whether the Solution is operating according to the DOR Business and Technical Requirements and applicable Performance Standards. During the testing process, Vendor and DOR will determine whether such entrance and exit criteria have been satisfied, and if the criteria are satisfied, the Pre-Live Testing may continue to succeeding activities. If the criteria are not satisfied, DOR can require Vendor to address any Issues and Defects with respect to such non-satisfaction of the criteria. DOR may modify or amend the scope, methodologies and procedures for executing system testing as may be necessary to adequately test the Solution. Vendor shall provide to DOR copies of all test data results and analyses generated by Vendor during its performance of any testing processes and procedures for the project. The Test Plan may include testing processes and procedures that are in addition to, but not inconsistent with, the testing processes and procedures set forth in this Article and, once finalized, shall be deemed to be a part of the applicable Project Agreement.

**6.3 Pre-Live Testing.** Pre-live testing for each Phase ("**Pre-Live Testing**") shall be performed by the parties in accordance with the responsibilities allocated to each party in the applicable Statement of Work, Project Plan and/or Test Materials and shall commence on the date, and shall continue for the period of time, specified in the applicable Statement of Work, Project Plan and/or Test Materials and, if no such period is specified, generally will be a period of sixty-five (65) days. DOR may elect, in its sole discretion, to reduce the number of days for



Pre-Live Testing. Vendor shall ensure that Extensions, Interfaces and all other software-based Deliverables required to be included in the applicable test are prepared in advance of the testing process. DOR shall have the right not to initiate a particular portion of the Pre-Live Testing for a component of the Solution or a Software Module, grouping of components of the Solution or Software Modules, or Phase, as applicable, if the required software-based Deliverable is not prepared in time for such testing.

Pre-Live Testing shall test and validate, as against the DOR Business and Technical Requirements and the Performance Standards:

- (a)** The functional capabilities of the Solution, as applicable, for each Phase (functional and unit testing);
- (b)** The accessibility capabilities of the Solution (accessibility testing);
- (c)** That Interfaces and information flows seamlessly as designed among the various components of the Solution and the overall Solution, as designed, meets DOR's enterprise data integration requirements (system integration and enterprise integration testing);
- (d)** The processing of high-volume data in a production-simulated environment in accordance with performance and scalability test plans developed by DOR to demonstrate acceptable performance of the Solution to DOR (stress testing);
- (e)** Regression testing incorporating, at DOR's election, any or all previously-installed software, to ensure that the software being tested does not impact or impair the functioning of the previously-installed and/or tested software, and that such tested software Integrates seamlessly with the previously-installed software (regression testing);
- (f)** User acceptance testing, including achieving acceptable performance response times and availability of the Solution, as applicable (user acceptance testing);
- (g)** Security features and functionality and ethical hacking/penetration testing (security testing);
- (h)** Corrections to any Level 1 or Level 2 Defects (including any required regression testing of such Defect corrections or workarounds), and with respect to Level 3 Defects, Vendor's corrections or workarounds acceptable to DOR; and
- (i)** Any other criteria that may be specified in the applicable Project Agreement or Contract Supplement or as may be agreed to by the parties;

all to verify and confirm that the Solution operates in accordance with the applicable DOR Business and Technical Requirements and the Performance Standards.

In addition to the foregoing, prior to completion of Pre-Live Testing for each applicable Phase of a project, Vendor shall provide to DOR the Documentation, record layouts and other Documentation for all Interfaces, Extensions and reports. If DOR notifies Vendor of any Defects discovered as a result of Pre-Live Testing, Vendor promptly shall correct such Defects. When all failures to op-

erate in accordance with the DOR Business and Technical Requirements and the Performance Standards identified during Pre-Live Testing for each Phase have been corrected by Vendor, the Solution has operated without any Level 1 Defects or Level 2 Defects during Pre-Live Testing for at least fifteen (15) consecutive days and all Deliverables, including all Interfaces, Extensions, reports and Documentation, have been provided to DOR, Vendor shall provide DOR with written certification that it has met all the criteria for Pre-Live Testing. If Vendor issues a certificate indicating completion but DOR disagrees with the certification, DOR shall provide written notice to Vendor and the parties shall meet to review the areas of non-compliance and any continued or unresolved disagreement shall be referred to the Executive Sponsors for resolution. Once the parties agree that the criteria for Pre-Live Testing have been satisfied with respect to a component of the Solution or Software Module, grouping of components of the Solution or Software Modules, or a Phase, as applicable, the Solution or component thereof shall be ready for Production Use in accordance with **Section 6.4**.

If there are Level 1 Defects or Level 2 Defects at any stage of the Pre-Live Testing process and Vendor will not be able to provide a correction on a timely basis such that important Due Dates may be missed, DOR shall have the right, in its sole discretion, to proceed to the next testing phase, including placing the Solution or component thereof into Production, and if it chooses to do so, then: (i) DOR has not waived any rights to the requirement for Vendor to correct such Defects; (j) the parties shall develop a plan to correct the Defect in an expeditious timeframe; (k) DOR shall have the right to withhold up to fifty percent (50%) of all payments due or that may become due to Vendor, and such withheld amounts shall be released to Vendor once such Defects have been corrected, or if no fees are then due or will become due, then DOR shall be entitled to a credit in the amount of Two Thousand Dollars (\$2,000) per day, which credit Vendor shall, at DOR's option, either pay directly to DOR or accrue and set-off against future amounts that will be payable.

**6.4 Production Use.** Following successful completion of Pre-Live Testing for a component of the Solution or Software Module, grouping of components of the Solution or Software Modules and/or Phase, as applicable, DOR will deploy the applicable component of the Solution in production as may be described in the Project Agreement or Contract Supplement ("**Production**" or "**Production Use**"). Once in Production, and subject to **Section 6.6** below regarding quarter and year end processing, there shall be a stabilization period of not less than ninety (90) days ("**Stabilization Period**") in order to correct any residual and/or new Defects, and an optimization period subsequent to the Stabilization Period of at least ninety (90) days ("**Optimization Period**") (the Stabilization Period when combined with the Optimization Period is collectively referred to as the "**Production Use Period**").

(a) **Stabilization Period.** During this time period, Vendor shall correct any Defects that were present in the Solution at the time of Production or that have arisen after the Solution was placed into Production, all subject to the further terms and conditions below.

(b) **Optimization Period.** During the Optimization Period, Vendor shall: (i) address any adoption Issues and negative user experiences that have occurred prior to the commencement of the Optimization Period; (ii) examine workflows and processes that were designed and configured into the Solution for purposes of determining whether such workflows and processes need to be changed or improved; (iii) and lead any changes or improvements to workflow and processes that are approved by DOR; and

(iv) ensure the transfer of Knowledge to DOR in accordance with the terms of the Agreement. The above time periods for the Stabilization Period and the Optimization Period may be changed by the parties in the Statement of Work.

**(c) Correcting Defects During the Stabilization Period.** If any Defects exist or are later discovered during the Stabilization Period, DOR shall report such Defects to Vendor, and Vendor shall promptly using its continuous efforts correct such Defects. Subject to the terms of **Sections 6.7** and **6.8**, the process described in this Section shall repeat as often as necessary until all Level 1 Defects or Level 2 Defects have been corrected by Vendor, and the Solution has operated in Production without any Level 1 Defects or Level 2 Defects for sixty (60) consecutive days. If the sixty (60) day period extends beyond the specified time allotted for the Stabilization Period, such Stabilization Period shall be extended to the extent necessary to demonstrate that the Solution has operated in Production without any Level 1 Defects or Level 2 Defects for the sixty (60) day period.

**(d) Certifying Completion of the Production Use Period.** If the requirements of this Section are satisfied, the DOR Executive Sponsor shall complete and provide the signed Certification Form to Vendor within ten (10) business days after the date such conditions have been satisfied. If DOR has not provided the signed Certification Form within the time period and Vendor believes it has satisfied the conditions set forth above, Vendor shall provide written notice to DOR indicating that it believes the conditions have been satisfied. Vendor shall not be permitted to provide the above written notice to DOR if there are any outstanding and unresolved Level 1 Defects or Level 2 Defects. DOR may reject Vendor's written certification within ten (10) business days after receipt of Vendor's written certification. If Vendor disputes or disagrees with DOR's rejection, the matter shall be referred to the Executive Sponsors for resolution. Once the parties agree that the criteria for Production Use have been satisfied with respect to Solution Modules or Phase, the Solution shall be ready for Phase Certification in accordance with **Section 6.7**.

**6.5 Suspension of Testing.** Notwithstanding anything contained herein to the contrary, DOR shall have the right to suspend Pre-Live Testing and/or Production Use at any time, and the time periods for conducting such testing for a Phase shall be extended on a day-for-day basis to account for the period of suspension. If the reason for the suspension is related to failed testing processes, a non-chargeable Change Order will be required to reset applicable project dates. If the suspension is due to DOR delays and/or not involving a failed testing process, a chargeable Change Order will be required.

**6.6 Quarter, Year End and Other Periodic Processes.** Notwithstanding anything to the contrary in this Article, to the extent any component of the Solution contains quarterly, year-end or other periodic processes, the Production Use Period shall remain open until the Solution has operated such processes in Production Use without any Level 1 Defects or Level 2 Defects.

**6.7 Solution Component and Phase Certification.** The following conditions are required for a component of the Solution or Software Module, grouping of components of the Solution or Software Modules, or a Phase to achieve "**Solution Component Certification**" or "**Phase Certification**," as applicable: (a) the criteria specified in **Section 6.4** have been satis-

fied with respect to the applicable component of the Solution or Phase; (b) Vendor has provided to DOR all Documentation and other Deliverables relating to the components of the Solution (including all Interfaces and related Documentation pursuant to **Section 6.3**); and (c) the DOR Executive Sponsor, or his or her designee, has provided written confirmation that the conditions specified in **subsections (a) and (b)** have been satisfied. If the requirements of **subsections (a) and (b)** above are satisfied, the DOR Executive Sponsor, or his or her designee, shall promptly (but in no event longer than forty-five (45) days following Vendor's written certification that the requirements of **subsections (a) and (b)** are satisfied) provide written confirmation required in **subsection (c)**. Nothing else, including DOR's use of the Solution, or any component thereof, in a live, production environment shall constitute Solution Component Certification or Phase Certification, affect any rights and remedies that may be available to DOR and/or constitute or result in "acceptance" under Law.

**6.8 Project Completion.** The following conditions are required for a project to achieve "**Project Completion**": (a) Solution Component Certification and/or Phase Certification has been achieved for the entire Solution or Phases, as applicable, included within the project; (b) Vendor has provided to DOR all Documentation and other Deliverables relating to the Solution (including pursuant to **Section 6.3**); and (c) Vendor has fulfilled its obligations relating to the transfer of Knowledge; and (d) the DOR Executive Sponsor, or his or her designee, has provided written confirmation that the conditions specified in **subsections (a) through (c)** have been satisfied. Nothing else, including DOR's use of the Solution, or any component thereof, in a live, production environment shall constitute acceptance or completion, or affect any rights and remedies that may be available to DOR under Law.

## **ARTICLE 7**

### **SUPPORT AND MAINTENANCE**

**7.1 General.** Vendor's obligations to support and maintain each Solution ("**Support and Maintenance Services**") are set forth in **Schedule 7.1**. Additional Support and Maintenance Services may be set forth in the applicable Project Agreement or Contract Supplement. Vendor's Support and Maintenance Services obligations with respect to the Solution shall commence on the date the applicable Contract Supplement or Project Agreement is signed and shall be made available to DOR commencing on the effective date of the Project Agreement or Contract Supplement and shall continue for the longer of: (a) twenty (20) years after Project Completion of the applicable Solution; and (b) as long as Vendor makes support and maintenance services for the applicable Software available to its customers generally (referred to as the "**Minimum Available Support Term**"). Subject to Vendor's obligation to make available Support and Maintenance Services to DOR during the Minimum Available Support Term, Vendor shall have the right to discontinue Support and Maintenance Services for licensed Software by providing DOR with two (2) years prior written notice of such discontinuation, but only if Vendor generally is discontinuing support and maintenance services for such Software for all of its customer base.

**7.2 End-User Satisfaction Surveys.** As part of Vendor annual ongoing Support and Maintenance Services, Vendor shall develop one (1) or more end-user surveys designed to elicit feedback from DOR's end users regarding their satisfaction with the Solution. Such end-user surveys shall be subject to DOR's prior review and approval.

**7.3 Technical User Satisfaction Surveys.** Prior to Project Completion under a Project Agreement and as part of Vendor's annual ongoing Support and Maintenance Services, Vendor shall develop one (1) or more technical user surveys designed to elicit feedback from DOR's technical support staff regarding their satisfaction with the Support and Maintenance Services provided by Vendor. Such technical user surveys shall be subject to DOR's prior review and approval.

**7.4 Satisfaction Survey Review.** Vendor shall report the results of the end-user and technical user surveys separately by categories of respondents from DOR and in the aggregate. Each year the Vendor Account Executive shall review the results of each survey with DOR within thirty (30) days following the mutually agreed deadline for completion and return of the survey. During each such review session, Vendor shall submit a communication plan to DOR for its review and approval that shall include, at a minimum, updates to the end-users and technical users regarding the results of the satisfaction surveys. Not later than thirty (30) days following each review session, Vendor shall provide to DOR an action plan for addressing any problem areas identified in the survey results.

## **ARTICLE 8**

### **PRICING AND PAYMENT TERMS**

#### **8.1 Solution Fees.**

**8.1.1 Software License Fees.** The Software license fees ("**Software License Fees**") and related payment terms for all Software licensed by DOR from Vendor pursuant to the Agreement shall be set forth in the applicable Project Agreement or Contract Supplement.

**8.1.2 Support and Maintenance Services Fees.** Fees for Support and Maintenance Services shall be set forth in the applicable Project Agreement or Contract Supplement. Unless other terms are set forth in the applicable Project Agreement or Contract Supplement, Support and Maintenance Services Fees: (a) shall be charged at a rate not greater than eighteen percent (18%) of the applicable discounted Software License Fees; (b) shall commence upon Project Completion with respect to the applicable Solution and shall be paid quarterly in arrears; and (c) may be increased by Vendor once annually commencing one (1) year following Project Completion with respect to the applicable Solution, provided that such annual increases shall not exceed CPI, with a cap of three percent (3%), in each case of the then-current Support and Maintenance Services Fees. Annual increases shall not carry forward from one year to the next, meaning that if Vendor elects not to increase the Support and Maintenance Services Fees in one year by the full amount allowed hereunder, Vendor shall not have the right to carry forward such "unused" increase into subsequent years. DOR shall have the right to require Vendor to provide documentation substantiating the CPI calculations. If Vendor notifies DOR of a fee increase which exceeds the foregoing limits, then notwithstanding any prior payment by DOR of invoices presented by Vendor, DOR shall be entitled to a refund or credit based on the actual increase that was permissible.

**8.1.3 Discounts on Future Software License Fees; Optional Software.** For any Software not included at no additional cost under **Section 3.1.1**, the Software Li-

cense Fees for all future Software licensed by DOR from Vendor pursuant to the Agreement for the ten (10) year period from the Effective Date shall be Vendor's then-current list price discounted \_\_\_\_\_ percent (\_\_\_%) **[DRAFTING NOTE: INSERT AMOUNT NOT LESS THAN ORIGINAL DISCOUNT OFFERED]**, or for such greater discount amounts as mutually agreed to by the parties. At DOR's request, an officer of Vendor shall certify in writing to DOR the list price for the applicable item(s) of Software. DOR shall exercise its right to such optional Software by sending written notice to Vendor, and upon such notice to Vendor the Software shall be deemed to be included as licensed Software under the Agreement. No further writing or action on the part of Vendor shall be required, other than the obligation to deliver such optional Software to DOR.

## **8.2 Equipment Fees.**

**8.2.1 Equipment Purchase Price.** The purchase price, maintenance terms and payment terms for each item of Equipment purchased by DOR from Vendor pursuant to the Agreement shall be set forth in a Project Agreement or Contract Supplement.

**8.2.2 Equipment Maintenance Fees.** Fees for Equipment maintenance shall be set forth in the applicable Project Agreement or Contract Supplement and shall commence following expiration of the manufacturer's warranty period for the applicable item of Equipment. Equipment maintenance fees may be increased by Vendor once annually commencing one (1) year following the date on which such fees commenced provided, however, that such annual increases shall not exceed CPI, with a cap of three percent (3%), in each case of the then-current Equipment maintenance charges. Annual increases shall not carry forward from one year to the next, meaning that if Vendor elects not to increase the Equipment maintenance charges in one year by the full amount allowed hereunder, Vendor shall not have the right to carry forward such "unused" increase into subsequent years. At DOR's request, an officer of Vendor shall certify in writing to DOR the amount of any price increase from the applicable Equipment manufacturer.

## **8.3 Implementation Services Fees.**

**8.3.1 Services Fees.** Fees for project management and implementation Services to be acquired by DOR from Vendor under the Agreement and the related payment terms for such Services shall be set forth in the applicable Project Agreement or Contract Supplement. Upon DOR's request, Vendor shall provide a Fixed Fee, not-to-exceed fee and/or time and materials estimate of the fees for the implementation Services to be provided under a Project Agreement or Contract Supplement.

**8.3.2 Service Rates.** For implementation Services provided on a Fixed Fee basis under a Project Agreement or Contract Supplement, the Service Rate used to develop any Fixed Fee arrangement and for Change Orders that increase or decrease fees shall be based on the services rates ("**Service Rates**") set forth in **Schedule 8.3.2**, and Vendor shall be permitted to allocate a contingency component of such Fixed Fee provided Vendor sets forth and separately identifies the contingency amount. Fees for all implementation Services provided on a time and materials or other billable basis shall be calculated using rates that do not exceed the Service Rates set forth in **Schedule 8.3.2**. Service Rates may be increased by Vendor once annually commencing on the first (1<sup>st</sup>)

anniversary of the date of Project Completion for the TLSR Project; provided, however, that such annual increases shall not exceed CPI, with a cap of three percent (3%), in each case of the then-current Service Rates. Annual increases shall not carry forward from one year to the next, meaning that if Vendor elects not to increase the Services Rates in one year by the full amount allowed hereunder, Vendor shall not have the right to carry forward such "unused" increase into subsequent years. DOR shall have the right to require Vendor to provide documentation substantiating the fee increase. If Vendor notifies DOR of a fee increase which exceeds the foregoing limits, then notwithstanding any prior payment by DOR of invoices presented by Vendor, DOR shall be entitled to a refund or credit based on the actual increase that was permissible. In determining Service Rates for personnel, Vendor shall not differentiate Service Rates within a single job or personnel classification, and if Vendor's business practices now or in the future nonetheless make this distinction, Vendor shall use the lesser of the applicable rates. Vendor shall not increase a particular person's billing rate as a result of a promotion, change in job classification or otherwise without DOR's prior written consent, it being the understanding of the parties that DOR does not expect any rate changes during the course of a particular project. Additionally, Vendor shall bill DOR in increments of one-quarter (¼) hour for all implementation Services provided, and shall not bill DOR for travel time unless, and only to the extent, permitted by then-current DOR Policies, including applicable rules and regulations set forth in the Washington State Administrative and Accounting Manual, currently available at <http://www.ofm.wa.gov/policy/10.htm>.

**8.3.3 Adjustment of Services Fees Under Time and Material Arrangements.** For each Project Agreement and Contract Supplement involving Services to be provided under a time and materials basis, Vendor shall provide DOR with an estimate of the total number of hours to complete the Services under that Project Agreement or Contract Supplement ("**Original Estimated Hours**"). If there is a change in scope under a Project Agreement or Contract Supplement, the parties shall utilize the Change Order procedures under **Section 5.3**, and the Original Estimated Hours shall be adjusted appropriately. Each month (or more frequently as requested by DOR), appropriate representatives of each party shall meet to discuss whether the Original Estimated Hours, as adjusted, is on target or is being exceeded (as reported in the most recent Project Status Report). If the actual number of Services hours provided by Vendor under a Project Agreement or Contract Supplement exceeds the Original Estimated Hours, then the following adjustments to the Service Rates shall be made for any hours exceeding one hundred five percent (105%) of the Original Estimated Hours, as adjusted, as follows:

Percentage of Overage Hours (Based on the Original Estimated Hours, as Adjusted)	Percentage Discount Off Service Rates for Hours in Percentage Range
0-10%	0%
> 10 + < 25%	10%
≥ 25 + < 40%	30%
≥ 40%	40%

The discounts set forth above shall only correspond to the hours included in the applicable percentage range. By way of example, if the Original Estimated Hours is one hundred (100) hours and the actual number of hours is one hundred thirty (130), then: No discount shall apply for hours

up to 110; a ten percent (10%) discount shall apply to hours 111 through 125; and thirty percent (30%) discount shall apply to hours 126 through 130.

#### **8.4     *Payment of Invoices.***

**8.4.1     *General.*** Vendor shall issue all invoices promptly following the occurrence of the invoicing events specified in the Agreement and/or in the applicable Project Agreement or Contract Supplement, and all such invoices shall be directed to DOR or its designee for payment. The initial form of invoice to be used by Vendor is set forth in **Schedule 8.4.1**. In order for DOR to process invoices from Vendor for payment, each invoice from Vendor must include the items listed below, as applicable to the goods or services being invoiced. Failure to provide each of the items below, as applicable, on the invoice shall be grounds for rejecting the invoice and requiring Vendor to resubmit with such information. Receipt of the invoice by DOR shall be deemed to occur only when all of the applicable information below is set forth on the invoice. Vendor invoices shall include the following items, as applicable: The DOR Technology Agreement number; the Statement of Work number; Vendor's name, address, phone number and Federal Tax Identification Number; a reasonably detailed description of the Services performed, including the date, hours worked, and a reasonably detailed description of the Services to which the invoice relates; Vendor's price for the Services; the net invoice price for each Service; a description of the component of the Solution, as applicable (including software) including the quantity ordered; date(s) of delivery and/or date(s) of installation and set-up; price for each item, or Vendor's list price for each item and applicable discounts; Support and Maintenance Services Fees; net invoice price for each item; applicable taxes; shipping costs; other applicable charges; total price; and payment terms including any available prompt payment discounts. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of Fifty Dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement. With respect to invoices for milestone-based payments, Vendor invoices shall include a copy of the applicable Certification Form signed by the DOR Executive Sponsor, or his or her designee. By submitting an invoice, Vendor certifies that the amount billed is accurate with respect to the fees, charges and expenses set forth therein and that such fees, charges and expenses are allowed pursuant to the Agreement. All invoices shall be issued in U.S. Dollars, and payment shall be made by DOR in U.S. Dollars.

**8.4.2     *DOR Billing Practices and Payment Structures.*** Vendor shall comply with DOR's standard billing practices, including providing supporting documentation as may be reasonably required to substantiate invoice amounts and the other requirements of this **Section 8.4**. Except as may be otherwise set forth in a Project Agreement or Contract Supplement, and, as may be limited by applicable Law, DOR shall not make any payments to Vendor in advance for any Services or Equipment. Project management and implementation Services shall be paid for by DOR in accordance with milestone payments, subject to holdback amounts to be paid upon Project Completion of the applicable project, all in amounts to be agreed between the parties and set forth in a Project Agreement, Contract Supplement, Change Order or other ordering document. Modifications to payment terms, including any adjustment to the payment of holdback amounts, shall require an amendment to the Project Agreement or Contract Supplement or a Change Order, as determined by DOR.



#### **8.4.3 Timeliness and Accuracy of Invoices.**

(a) Vendor acknowledges that timeliness and accuracy of invoicing is a critical DOR business requirement, as Vendor's failure to do so may adversely impact DOR's ability to encumber funds within the proper fiscal year. Accordingly, and without limiting the generality of the terms set forth in **Sections 8.4.1** or **8.4.2**, Vendor shall issue each invoice hereunder within sixty (60) days after the date on which Vendor was authorized by the terms of the Agreement and/or the applicable Project Agreement or Contract Supplement to issue such invoice to DOR (for each such invoice, the "**Invoicing Deadline**") and such invoice shall be accurate and correct. DOR shall notify Vendor of any inaccurate invoice, and Vendor shall re-submit an accurate invoice. DOR is not obligated to pay or partially pay any inaccurate invoices. If Vendor fails to submit accurate invoices by an Invoicing Deadline, then the invoice amount (once determined to be accurate) shall be reduced by one and one half percent (1.5%) per month for each month (or partial month) that Vendor fails to invoice DOR following the applicable Invoicing Deadline. Further, if any Vendor invoice contains an overbilling error that requires a financial adjustment of an amount equal to or greater than five percent (5%) of the total amount invoiced on that invoice, in addition to promptly crediting the overbilled amount, Vendor shall credit to DOR on the next invoice an amount equal to Five Thousand Dollars (\$5,000) to cover the DOR expenses associated with reconciling such invoices.

**8.4.4 Payment and Disputes.** Within sixty (60) days following its receipt of the applicable invoice, DOR shall pay the invoice, provided that: (a) it was accurately and timely issued as provided in **Sections 8.4.1** and **8.4.2**; and (b) such invoice is not disputed by DOR in accordance with the further terms of this Section. Vendor shall accept electronic funds transfers as the form of payment. DOR will review submitted invoices in accordance with its current invoice review practices and provide Vendor with feedback on the accuracy of the invoice within fifteen (15) business days of receipt. If there are corrections to be made, Vendor will promptly correct the invoice and resubmit to DOR for processing, and provided prompt submission is made, payment will be made within the original 60 day period described above. If there is an issue or problem with the invoice determined after the initial 10 day review period, DOR will notify Vendor promptly of the issue or problem, and, upon resolution or correction, will work to expedite payment. If an invoiced amount is disputed in good faith by DOR, then DOR promptly shall notify Vendor of the dispute and, until resolution of the dispute occurs pursuant to **Article 14**, DOR shall have the right to withhold and suspend disputed payments. All of the parties' obligations under the Agreement shall continue unabated during the duration of the dispute resolution. If DOR claims that it has been inappropriately billed but it has already paid the disputed amount, the parties shall work to resolve the matter within ninety (90) days from the date of DOR's written notice of such overpayment, and each party shall provide the other with all relevant documentation in an effort to resolve the matter as quickly as possible. If Vendor determines that DOR was billed improperly, it promptly shall issue to DOR a credit memo that DOR can deduct on the next invoice billed.

**8.4.5 Small Business, Minority and Women's Business Enterprise (MWBE) and Veteran-Owned Business Participation.** [DRAFTING NOTE: This Section ap-

**plies if Vendor indicated small business, minority, women's, or veteran's business participation in its RFP Response. If not, this Section will be deleted.]** With each invoice for payment and within thirty (30) days of DOR's request, Vendor shall provide DOR an affidavit of amounts paid. The affidavit of amounts paid shall either state that Vendor still meets the definition of small business vendor and/or maintains its MWBE and/or Veteran-Owned certification, or state that its Subcontractor(s) still meets the definition of small business and/or maintain(s) its/their MWBE and/or Veteran-Owned certification(s) and specify the amounts paid to each small business, certified MWBE or Veteran-Owned Subcontractor under the Agreement. Vendor shall maintain records supporting the affidavit of amounts paid in accordance with **Section 15.2.6**.

**8.5 Travel and Out-of-Pocket Expenses.** Except to the extent that a Project Agreement, Contract Supplement, Change Order or other ordering document expressly states that DOR will reimburse Vendor for staffing accommodation, living, travel, out-of-pocket or other expenses, the fees (including Fixed Fees) set forth in a Project Agreement, Contract Supplement, Change Order or other ordering document shall be deemed to include all reimbursements, payments, liabilities and/or charges related to expenses and DOR will not reimburse Vendor for any staffing accommodation, living, travel, out-of-pocket or other expenses.

To the extent that a Project Agreement, Contract Supplement, Change Order or other ordering document expressly states that DOR will reimburse Vendor for staffing accommodation, living and travel, out-of-pocket or other expenses, Vendor shall be reimbursed for such items in accordance with the then-current DOR Policies, including applicable rules and regulations set forth in the Washington State Administrative and Accounting Manual, currently available at <http://www.ofm.wa.gov/policy/10.htm>. Travel and out-of-pocket expenses may be subject to a not-to-exceed or other agreed arrangement(s) as may be set forth in a Project Agreement or Contract Supplement. Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of Fifty Dollars (\$50) or more when requesting reimbursement. Travel and out-of-pocket expenses that are not submitted with receipts (as required) and other required substantiating documentation in accordance with the DOR Policies within sixty (60) days from the date chargeable to DOR shall be reduced by one and one half percent (1.5%) per month for each month (or partial amount) that Vendor fails to invoice DOR following the applicable date such travel and out-of-pocket expenses were chargeable by Vendor to DOR. Travel and out-of-pocket expenses that do not receive pre-approval by DOR, will not be eligible for reimbursement. If Vendor's expense reports contain errors that result in financial adjustments of five percent (5%) or more and such adjustments occur more than two (2) times over a twelve (12) month period, Vendor will be required to reimburse DOR's costs and expenses in reconciling Vendor's expense reports for each such report over the second of such occurrence during such 12 month period, up to Five Thousand Dollars (\$5,000).

**8.6 Set-Off Rights.** Vendor shall comply with DOR's billing practices relating to the issuance of credit notes and/or memoranda relating to amounts due to DOR under the Agreement, including any Delay Credits, Quality Credits, Performance Credits or unresolved disputed amounts as described in **Section 8.4**. If Vendor fails to issue to DOR a credit note or memorandum on its next invoice to DOR for any amounts that become due to DOR in accordance with the above, then DOR shall have the right to set off such amounts against any amounts then due or that become due to Vendor under the Agreement. If DOR cannot effectuate a complete set-off due to insufficient amounts owed by DOR to Vendor, Vendor promptly shall refund unre-

alized set off amounts to DOR no later than twenty (20) days following its receipt of written notice from DOR requiring it to do so.

**8.7 Taxes.** DOR shall pay all sales and use taxes required under applicable Law. Vendor must pay all other taxes, including the Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, and personal property taxes levied or assessed on Vendor's personal property. Vendor shall include on each invoice a separate line item specifying the tax for each component of Service or the Solution. Vendor shall work with DOR to ensure that Vendor is properly determining the amount of taxes under applicable Law associated with each type of Service or the Solution. DOR shall not be charged for any taxes levied or assessed on the income of Vendor's employees such as IRS compensatory taxes. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under the Agreement. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, compensatory or other expenses for Vendor or Vendor's personnel shall be Vendor's sole responsibility. DOR reserves the right to require evidence of payment of such taxes prior to making any final payments due under a Project Agreement or Contract Supplement.

## **ARTICLE 9**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### **9.1 *Functionality and Performance Warranties.***

**9.1.1 Solution Functionality.** Vendor represents and warrants to DOR that: (a) the Solution shall possess all of the functional capabilities described in: (i) the DOR Business and Technical Requirements; and (ii) the Documentation; and shall perform all such functions described in **subsection (a)** without any Level 1 Defects or Level 2 Defects; (b) are designed to and shall not require multiple user sign-ons and forced sign-offs within, across and among all product lines, including future components of the Solution provided to DOR from and after the Effective Date, shall have the same "look and feel" within a product line, and either share a common database used across components of the Solution, or if there are multiple databases, the data among such databases is coordinated, synchronized or otherwise managed by the Solution without the need of a separate interface; and (c) to the extent the Solution has mobile features and/or uses a mobile platform, the mobile component of the Solution complies with Mobile Standards. The terms of this Section are effective on the Effective Date and shall remain in effect with respect to particular Solution for as long as DOR is paying for Support and Maintenance Services.

**9.1.2 Solution Performance.** Vendor represents and warrants to DOR that the Solution set forth in the applicable Project Agreement or Contract Supplement shall operate in accordance with the Performance Standards when operating within the operating environment(s) described in the Project Agreement or Contract Supplement (the "**Approved Equipment Configuration(s)**"), and in the event the Solution fails to operate in accordance with the Performance Standards, DOR shall be entitled, in addition to DOR's other rights and remedies in the Agreement, to the Performance Credits set forth in the applicable Project Agreement or Contract Supplement. DOR and Vendor jointly shall assess, on an annual basis commencing on the first anniversary of Project Completion for the applicable Solution and as part of the annual assessment review described in **Schedule 7.1** (or more frequently if necessary) whether DOR is then operat-

ing the Solution within the Approved Equipment Configuration parameters. If DOR's operating environment has changed so that DOR is no longer operating the Solution within the Approved Equipment Configuration parameters, and DOR wants to continue the performance warranty set forth in this Section with respect to that Solution, then Vendor shall make reasonable Solution-related recommendations that are necessary to ensure that the Solution shall continue to operate in accordance with the warranties set forth herein while operating within the re-established Approved Equipment Configuration, including which recommendations may include the purchase by DOR of additional equipment and/or the license of additional software. If DOR implements such recommendations, the warranties set forth in this Section shall remain in effect for as long as the re-established Approved Equipment Configuration is not exceeded. The terms of this Section are effective on the Effective Date and shall remain in effect with respect to particular Solution for as long as DOR is covered under Support and Maintenance Services for such Solution and DOR elects to have the process described in this Section repeated. Vendor's representations and warranties herein shall not apply to DOR-caused Solution failures.

**9.1.3 Demonstrations.** Vendor represents and warrants to DOR that, for any Demonstrations provided to DOR in which the Solution was proposed, Vendor used only generally available versions and releases of the Solution when it developed the Demonstrations, including the use of actual file structures, APIs, layouts and screens; (b) the test data populated actual files and file structures used in the Solution to show the movement of data native in the system and was not simulated in (*i.e.*, splashed into) temporary excel or other files created to show features, functionality or information flows that are not present in the Solution; and did not use any tools, utilities, or other techniques to replicate or simulate any portion of the Solution. This representation and warranty shall survive the expiration or termination of the Agreement.

#### **9.1.4 Certification of Third Party Equipment and Software.**

**(a) General.** If DOR acquires any Third Party software and/or equipment to operate with the Solution that has been previously recommended by Vendor or previously certified by Vendor (whether for DOR or any other customer of Vendor) then such software and/or equipment shall be deemed certified by Vendor for DOR's use and such use shall not affect the warranties set forth herein. If DOR acquires any Third Party software and/or equipment that has not been recommended by Vendor in a written configuration or previously certified by Vendor (whether for DOR or any other customer of Vendor), then DOR may submit such Third Party software and/or equipment for certification by Vendor in order to assure conformance with Vendor's reasonable specifications. Certification of Third Party software and/or equipment shall begin as soon as reasonably possible, but in no event later than ten (10) business days following DOR's request. Fees for certification Services provided by Vendor shall be charged at the Service Rates and limited to the reasonable time, materials and out-of-pocket expenses associated with such certification. Upon certification by Vendor, such Third Party software and/or equipment shall be deemed qualified to operate with the Solution without affecting the warranties set forth herein.

**(b) Technical Alternatives.** If Vendor determines that the Third Party software and/or equipment cannot be certified, Vendor shall provide DOR with a written explanation detailing the technical reasons why the software or equipment cannot be certified. If the technical issues are addressable in a commercially reasonable manner (such as acquiring technical proficiency in the technology to enable certification to be achieved) and the parties can address such issues (or, in the case of DOR, DOR makes an offer to address the technical issue), then the certification will proceed and the software or equipment will be certified upon addressing the technical issues. If the parties determine that the technical issues cannot be reasonably addressed then the parties shall work to develop a modified or alternative configuration or technology so that certification can proceed, and upon the adoption of such modification or alternative configuration or technology by DOR, Vendor will provide its certification.

**(c) Retrofitting Previously Certified Technology.** If DOR migrates to a later release of a previously certified configuration or technology under this **Section 9.1.4**, at DOR's request, Vendor will provide technical assistance to DOR and/or re-certify the configuration or technology, all at the Service Rates.

**9.1.5 Solution Design Limitations.** Each Project Agreement and Contract Supplement involving the implementation of a Solution shall provide a representation and warranty regarding the design limitations with respect to the Solution, including transaction volume throughput, field and record sizes, scalability and capacity limitations. The terms of this Section are effective on the Effective Date and shall remain in effect with respect to particular Solution for as long as DOR is paying for Support and Maintenance Services.

**9.1.6 Disabling Codes.** Vendor represents and warrants that the Software and any Deliverable provided by Vendor do not contain – and DOR shall not receive from any Vendor data transmission (including any connection to any Vendor web-site or bulletin board) – any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Solution or any component thereof to become inoperable or incapable of being used in the full manner for which it was designed and created (a "**Disabling Code**"), including any limitations that are triggered by, as applicable: (a) the Solution being used or copied a certain number of times, or after the lapse of a certain period of time; (b) the Software being installed on or moved to a central processing unit or system that has a serial number, model number or other identification different from the central processing unit or equipment on which the Software originally was installed; or (c) the occurrence or lapse of any similar triggering factor or event. If Vendor introduces a Disabling Code into the Solution, at its sole cost and expense, Vendor shall, as applicable: (d) take all steps necessary to test for the presence of Disabling Codes; (e) furnish to DOR a new copy of the Solution without the presence of Disabling Codes; (f) install and implement such new copy of the Solution at DOR; (g) restore any and all data and programming lost by DOR as a result of such Disabling Code (such restoration shall include, if needed, on-site technical assistance to extract data from corrupted data files, restoration of backup media, data log analysis, and the like). This representation and warranty shall survive the expiration or termination of the Agreement.

**9.1.7 Comprehensiveness of Project Agreements and Contract Supplements and Sufficiency of Due Diligence.** In order to avoid out-of-scope changes to a project and work to be performed under a Project Agreement or Contract Supplement, Vendor represents and warrants to DOR that, as of the effective date of the applicable Project Agreement or Contract Supplement: (a) Vendor identified in the applicable Project Agreement or Contract Supplement all the equipment, software, services and other items required to: (i) implement the Solution described therein; and (ii) achieve the DOR Business and Technical Requirements and other requirements as set forth in such Project Agreement or Contract Supplement, and the Performance Standards; (b) all such equipment, software, services and other items are included in the applicable Project Agreement or Contract Supplement; and (c) there are no other products that are required to meet the DOR Business or Technical Requirements or Performance Standards. Vendor further represents and warrants to DOR that, upon entering into a Project Agreement or Contract Supplement, that it will have properly sized the amount of personnel and other resources required to complete its obligations under a Project Agreement or Contract Supplement for the fees stated therein; the Services to be provided by Vendor under any Project Agreement or Contract Supplement are the only services required to meet the DOR Business and Technical Requirements; and there are no other services (*i.e.*, optional or needed additional services) that are omitted from the Project Agreement or Contract Supplement but necessary to meet such requirements. The terms of this Section are effective on the Effective Date and shall remain in effect for a period of two (2) years after Project Completion or the termination of a Contract Supplement.

**9.1.8 Exclusions.** Vendor shall not be responsible for a breach of the representations and warranties set forth in **Section 9.1** to the extent such breach is caused by: (a) if applicable, DOR's failure to properly install and maintain the Solution, but only if Vendor has provided DOR with written notice of such failure; (b) any alterations of or additions to the Solution performed by a party other than Vendor or a Third Party not acting on Vendor's behalf, at its direction or with its approval; or (c) use of the Solution in a configuration not set forth in the Documentation or an approved configuration.

**9.1.9 Correction of Failure to Meet Functionality and Performance Warranties.** Upon any failure to comply with the representations, warranties and/or covenants set forth in this Section, within the applicable time frames specified in **Schedule 7.1**, or within five (5) days if such time frames are not applicable to the breach, in each case following receipt of written notice from DOR of such failure, Vendor shall repair, replace or correct, at Vendor's sole cost and expense, the applicable component(s) of the Solution, including by providing any additional software, equipment and/or services that may be necessary. The remedies set forth in this Section shall be in addition to any Performance Credits and/or any other rights and remedies that may be available to DOR.

**9.2 Services Warranty.** Vendor represents and warrants to DOR that it shall perform all Services in accordance with industry practices and standards generally applicable to such Services; provided, however, that where the Agreement or a Project Agreement or Contract Supplement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance.

**9.3 Open Systems Warranty and Covenants.** Vendor represents and warrants to DOR that, as of the Effective Date, the Solution (including Interfaces) is Compliant with current versions of IEEE 802.3, 802.11(g/n)(wireless), industry standards for wave form transmissions ANSI X3T9.5 (FDDI Specifications), EIA/TIA 568A (building wiring specifications), TCP/IP protocols, HTTP/HTTPS standards and other standards that may be set forth in a Project Agreement or Contract Supplement. Vendor covenants that the Solution and future releases and version of the Solution shall be Compliant with such standards, as such standards are updated from time-to-time. For purposes of the Agreement, the term "**Compliant**" shall mean that the Solution is compatible with the applicable standard and is able to utilize fully each and every feature and functionality of that release level without workarounds or additional programming. The representations and warranties set forth in this Section shall remain in effect for as long as the Agreement is not terminated.

**9.4 Third Party and Mobile Warranties.** Vendor represents and warrants to DOR that it has tested or shall have tested at the time of installation all Third Party Software supplied by Vendor to DOR and determined that such Third Party Software meets the representations and warranties set forth in the Agreement and/or the applicable Project Agreement or Contract Supplement. With respect to mobile and/or Third Party components of the Solution, Vendor represents, warrants and covenants to DOR that State Data shall not be stored, collected, used in geolocation tracking services, or other uses inconsistent with DOR Policies, and that Third Party terms and conditions relating to the use of mobile devices are consistent with and do not violate any Laws, the Mobile Standards and/or DOR Policies. The representations and warranties set forth in this Section shall survive the expiration or termination of the Agreement.

**9.5 Equipment Warranty.** Vendor represents and warrants that the Equipment is new, unused and proven in field service, is not discontinued or, to Vendor's knowledge, soon to be discontinued, and there are no substituted or replaced parts in any component of Equipment. Reliance on equipment redundancy shall not relieve the Vendor of designated repair and response time warranties. Vendor shall secure from the applicable manufacturer(s) such other warranties and indemnities as may be available with respect to such Equipment at no additional cost to DOR, and assign and pass through to DOR such warranties and indemnities to the extent legally assignable. If such warranties and indemnities are not assignable to DOR, at DOR's request, Vendor shall enforce such warranties and indemnities on DOR's behalf. This representation and warranty shall survive the expiration or termination of the Agreement.

**9.6 Intellectual Property Warranty.** Vendor represents and warrants to DOR that, as of the Effective Date, and as of the effective date of each Project Agreement and Contract Supplement (except to the extent disclosed therein), the Solution and DOR's use of the Solution in accordance with the terms of the Agreement does not infringe upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any Third Party. Vendor further represents and warrants to DOR that, as of the Effective Date, and as of the effective date of each Project Agreement and Contract Supplement (except to the extent disclosed therein), there is, and there shall be, no actual or threatened suit against Vendor by any Third Party based on an alleged violation of any right specified in the preceding sentence. This representation and warranty shall survive the expiration or termination of the Agreement.

**9.7 Warranty of Authority.** Each party represents and warrants to the other that it has the right to enter into the Agreement and, in the case of Vendor, as of the Effective Date and as of the effective date of each Project Agreement and Contract Supplement (except to the

extent disclosed therein), there is not and there shall not be, any outstanding assignments, grants, licenses, encumbrances, obligations or agreements that relate to the Solution (whether written, oral or implied) that are inconsistent with the Agreement and the rights granted or transferred herein. This representation and warranty shall survive the expiration or termination of the Agreement.

**9.8 Warranty of Title.** Vendor represents and warrants to DOR that it has the full authority to provide, license or sublicense the Solution to DOR. Vendor further represents and warrants that all Equipment shall be free and clear of all liens, claims, encumbrances and demands of Third Parties. This representation and warranty shall survive the expiration or termination of the Agreement.

**9.9 Pending Litigation Warranty.** Vendor represents and warrants to DOR that, as of the Effective Date and as of the effective date of each Project Agreement and Contract Supplement (except to the extent disclosed therein), there is (and there shall be at the time of a future Project Agreement and Contract Supplement), no action, suit, claim, investigation or proceeding pending, or the basis for any action, suit, investigation or proceeding, and to the best of Vendor's knowledge, there is no action, suit, claim, investigation or proceeding, or the basis for any action, suit, investigation or proceeding, threatened against, by or affecting Vendor, its Affiliates or the Solution in any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind that, if adversely determined, might affect Vendor's ability to enter into the Agreement and/or the applicable Project Agreement or Contract Supplement and perform all of its obligations herein.

**9.10 Offshoring.** Vendor represents, warrants and covenants to DOR that Vendor shall not, except as may otherwise be approved in advance by DOR in writing, which writing may include an express consent as may be set forth in a Project Agreement or Contract Supplement: (a) perform any of its obligations under the Agreement from locations, or using employees, contractors and/or agents, situated outside the United States; or (b) directly or indirectly (including through the use of subcontractors) transmit any State Data outside the United States; or (c) allow any State Data to be accessed by Vendor employees, contractors and/or agents from locations outside the United States.

If a Project Agreement or Contract Supplement provides that Services may be provided offshore, to the extent any Law or regulation enacted after the Effective Date or any policy or circumstances exist or are created which have, or may have, an adverse impact on DOR with respect to legal compliance or its relationships with the State, its unions or otherwise, Vendor acknowledges and agrees that, to the extent technically feasible and commercially reasonable, it shall change the delivery of any affected offshore Services in a manner which enables DOR to avoid such adverse impact; or if the foregoing objective cannot be met to the satisfaction of the parties, then the parties shall engage in good faith negotiations to arrive at a mutually agreeable reasonable alternative. Further, in any case where access to State Data is permitted outside the United States, Vendor shall: (d) comply with the Security Policies and Procedures relating to network and security; (e) implement software controls to permit "view only" access to State Data, which controls shall prohibit downloading, printing, copying and/or further transmitting or transferring State Data; (f) inform any personnel with access to State Data of the restrictions contained herein; (g) implement a program to monitor compliance with the terms contained herein; and (h) immediately notify DOR of any violations of these terms and conditions. To the



extent that an Authorized User is physically located outside of the United States and requests access to the Solution or Support and Maintenance Services from Vendor, Vendor's provision of access to the Solution or Support and Maintenance Services to such user physically located outside the United States shall not constitute a breach of this Section provided that Vendor otherwise complies with the terms of this Section.

**9.11 State Data.** Vendor represents and warrants to DOR that it shall not collect, use, store, display and/or transmit State Data (including in a summary, extracted, redacted or de-identified form) other than as necessary to fulfill its obligations under the Agreement.

**9.12 Conflicts of Interest.** Vendor represents and warrants to DOR that neither Vendor, any of its Affiliates or authorized subcontractors, nor any employee of either, has, shall have, or shall:

(a) Acquire, any contractual, financial, business or other interest, direct or indirect, that would conflict in any manner or degree with Vendor's performance of its duties and responsibilities to DOR under the Agreement or otherwise create an appearance of impropriety with respect to the Agreement.

(b) Use the authority provided or to be provided under the Agreement to improperly obtain financial gain for Vendor, any of its Affiliates, any of their employees, or any member of the immediate family of any such employee.

(c) Use any State Data acquired in connection with the Agreement to obtain financial gain for Vendor, any of its Affiliates, any of their employees, or any member of the immediate family of any such employee.

(d) Accept anything of value based on an understanding that the actions of Vendor, any such Affiliates or any such employees on behalf of DOR would be influenced thereby; and neither Vendor nor any of its Affiliates shall attempt to influence any DOR employee by the direct or indirect offer of anything of value.

(e) Pay or agree to pay any person, other than *bona fide* employees working solely for Vendor or such Affiliates or any of Vendor's subcontractors, any fee, commission, percentage, brokerage fee, contingent fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of the Agreement. If Vendor fails to comply with this Section, DOR shall have the right to either cancel the Agreement without liability to DOR or, in DOR's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage fee, contingent fee, gift or other consideration.

**9.13 Compliance with Federal and State Programs.** With respect to Vendor and Vendor's employees providing Services to DOR:

(a) Vendor represents and warrants that neither Vendor nor any of its employees is currently ineligible to participate in federal or state procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate.

(b) Vendor shall immediately disclose to DOR if it or any of its employees is debarred, suspended, excluded or otherwise declared ineligible to participate in federal or state procurement or non-procurement programs.

(c) Vendor shall immediately disclose to DOR if Vendor or any of its employees is proposed for exclusion, debarment or suspension from participation in any federal or state procurement or non-procurement program.

(d) DOR has the right to immediately terminate the Agreement for cause and without further liability to DOR if Vendor becomes ineligible to participate in federal or state procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate.

(e) If any of the occurrences described above, Vendor shall provide written notice immediately to DOR in accordance with **Section 15.1**.

**9.14 Additional Warranties.** Vendor agrees that its performance under the Agreement shall include, in addition to the warranties set forth in this Article, all representations and warranties that may be set forth in a Project Agreement or Contract Supplement.

**9.15 Material Misstatements or Omissions.** No representation or warranty by a party that is contained in the Agreement or that may be contained in any Project Agreement, Contract Supplement, Schedule, Exhibit, Addendum or Attachment contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements and facts contained herein or therein not materially misleading.

**9.16 Disclaimer of Warranties.** THE WARRANTIES SET FORTH IN THE AGREEMENT AND IN ANY PROJECT AGREEMENT OR CONTRACT SUPPLEMENT, SCHEDULE, EXHIBIT, ADDENDUM OR ATTACHMENT CONSTITUTE THE ONLY WARRANTIES OF THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **ARTICLE 10**

### **TERM AND TERMINATION**

#### **10.1 Term.**

**10.1.1 Term of Agreement.** The Agreement shall commence on the Effective Date and remain in effect until the date that no obligations remain under any Project Agreement, Contract Supplement, Change Order or other ordering document unless: (a) the parties mutually agree in writing to terminate the Agreement; (b) DOR terminates the Agreement pursuant to **Section 10.1.3**; or (c) a party elects to terminate the Agreement following the occurrence for an Event of Default or under the circumstances described in **Section 15.6**.

**10.1.2 Term of Project Agreements and Contract Supplements.** Each Project Agreement and Contract Supplement shall commence on its effective date and remain in effect: (a) with respect to a Project Agreement, for the term specified in the Pro-

ject Agreement, and with respect to a Contract Supplement, until the obligations under the Contract Supplement have been fulfilled, provided that a Project Agreement or Contract Supplement may provide that certain terms and conditions may survive; (b) the parties mutually agree in writing to terminate the Project Agreement or Contract Supplement; (c) DOR terminates the Project Agreement or Contract Supplement pursuant to **Section 10.1.3**; or (d) a party elects to terminate the Project Agreement or Contract Supplement following the occurrence for an Event of Default or under the circumstances described in **Section 15.6**.

**10.1.3 Termination for Convenience.** DOR shall have the right to terminate the Agreement in whole or in part, any Project Agreement or Contract Supplement, involving the purchase of Services, and/or any line or category of Services being provided under a Project Agreement or Contract Supplement, without cause and for its convenience and without further liability (except as provided in this Section) upon ten (10) days prior written notice to Vendor. Following any such termination, DOR will only be responsible for: (a) subject to the terms of **Section 8.6**, actual, documented reimbursable expenses incurred by Vendor prior to receipt of the written notice of termination; and (b) the value (at the applicable rates under the Agreement) of any Services provided by Vendor prior to (and/or, if authorized as provided above in this Section, after) receipt of the written notice of termination. Upon Vendor's receipt of written notice of termination pursuant to this **Section 10.1.2**, to the extent not previously delivered, Vendor shall deliver to DOR all Deliverables developed by Vendor, whether completed or in draft form, and the terms of **Section 4.2.4** shall apply. In determining the fees owed under **subsection (b)** above with respect to partially completed Deliverables or milestones developed under a Fixed Fee arrangement, Vendor shall disclose to DOR: (d) the number of hours already expended by Vendor toward achieving the milestone or Deliverable ("**E**"); and (e) the number of hours still needed by Vendor to complete the Deliverable or milestone ("**N**"). The percent complete for the Deliverable or milestone will be represented by the fraction of:  $E/(N+E) \times 100$ . For example, if Vendor has expended sixty (60) hours towards completing a Deliverable or milestone and Vendor estimates that it will take ninety (90) additional hours to complete such Deliverable or milestone, the Deliverable or milestone will be calculated to be forty percent (40%) complete (*i.e.*,  $60/(60+90) \times 100 = 40\%$ ). DOR shall then have the option of requiring Vendor to complete the Deliverable or milestone for the applicable unpaid Deliverable or milestone fee, or pay Vendor a *pro rata* amount of such Deliverable or milestone fee based on the percent complete as calculated above.

**10.1.4 Termination Due to Insufficient Funding.** If there is insufficient funding to complete a project, DOR and Vendor shall meet and discuss adjusting the time frames for the delivery of the Solution, Services and/or Equipment, in a manner such that the Solution, Services and/or Equipment can be provided to DOR, but with different time frames based on the projected future funding. The parties will negotiate in good faith for a period of up to ninety (90) days (or longer by mutual agreement). If, at the end of such agreed ninety (90) day period the parties have reached mutually acceptable terms, such terms will be memorialized in a written amendment to the Agreement. If the parties have not reached mutually agreeable terms, DOR may either elect to continue the Agreement or the applicable Project Agreement or Contract Supplement with respect to the Solution, Services and/or Equipment, or terminate the Agreement, and/or applicable Project Agreement or Contract Supplement without further liability or penalty.

**10.1.5 Survival.** Any terms of the Agreement and/or any Project Agreements and Contract Supplements that would, by their nature or through the express terms of the Agreement or the applicable Project Agreement or Contract Supplement, survive the expiration or termination of the Agreement and/or the applicable Project Agreement or Contract Supplement shall so survive, including the terms of **Sections 4.2.4, 4.2.5, 4.6.2, 8.5 through 8.7, 9.1.5, 9.1.6, 9.2, 9.3, and 9.6 through 9.16, and Articles 10 through 15.**

**10.2 Events of Default.** The following events shall constitute "**Events of Default**," and the occurrence of any one (1) or more of such Events of Default shall constitute a material breach of the Agreement and/or the applicable Project Agreement or Contract Supplement that shall afford the non-breaching party the rights and remedies set forth in this Article:

(a) Vendor's failure to achieve any Critical Milestone by the applicable Critical Milestone Due Date, which failure shall constitute a Vendor Event of Default unless such failure: (i) was caused by DOR or its Third Party's delays or a Force Majeure Event that was not capable of being mitigated; or (ii) is cured by Vendor within twenty (20) days after its receipt of written notice of such breach;

(b) Vendor's failure to correct a Level 1 Defect or provide a workaround reasonably acceptable to DOR within the timeframes set forth in the Agreement, and if no timeframe is specified, then within five (5) calendar days;

(c) A party's material breach of any other representation, warranty, obligation or covenant set forth in the Agreement, which material breach shall constitute an Event of Default by the non-performing party, provided further that: (i) such failure is not cured within the applicable time frames, if any, set forth in the Agreement, or if no time frame for curing such breach is specified, then within twenty (20) days following the non-performing party's receipt of written notice of such failure; or (ii) if the breach reasonably cannot be cured within the time frames specified in the foregoing **subsection (i)**, the non-performing party has failed to provide to the other party within ten (10) days following its receipt of written notice of such failure a written plan to cure such failure that is acceptable to such other party in its sole discretion;

(d) Vendor's material breach of its Support and Maintenance Services obligations, which material breach shall constitute a Vendor Event of Default;

(e) DOR's failure to pay an undisputed invoice in accordance with the terms of **Section 8.4.3**, which failure shall constitute a DOR Event of Default;

(f) Vendor's failure to maintain insurance coverage as specified in **Sections 15.3**, provided that such failure is not cured by Vendor within twenty (20) days following receipt of written notice of such failure, which failure shall constitute a Vendor Event of Default;

(g) Vendor's failure to obtain DOR's consent prior to any assignment of the Agreement by Vendor as required under **Section 15.13**, which failure shall constitute a Vendor Event of Default;

(h) A party's breach of its confidentiality obligations set forth in **Section 12**, which shall constitute an Event of Default by the breaching party;

(i) Vendor's failure to make any Deposit(s) required under the Source Code Escrow Agreement in accordance with the terms set forth therein, provided that such failure is not cured within twenty (20) days following receipt of written notice of such failure, which shall constitute a Vendor Event of Default;

(j) The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against Vendor or any parent Affiliate of Vendor under any law if such proceedings have not been dismissed or discharged within twenty (20) days after they are instituted; the insolvency or making of an assignment for the benefit of creditors or the admittance by Vendor or any parent Affiliate of Vendor of any involuntary debts as they mature; the institution of any reorganization arrangement or other re-adjustment of debt plan of Vendor or any parent Affiliate of Vendor; or any corporate action taken by the Board of Directors of Vendor or any parent Affiliate of Vendor in furtherance of any of the above actions, which shall constitute a Vendor Event of Default; or

(k) If Vendor or any parent Affiliate of Vendor makes an assignment of all or substantially all of its assets for the benefit of creditors, or Vendor's or any parent Affiliate of Vendor's Board of Directors takes any corporate action by in furtherance of the above action, which shall constitute a Vendor Event of Default.

**10.3 Rights and Remedies of Vendor Upon Default of DOR.** Upon the occurrence of a DOR Event of Default, Vendor shall be entitled to all of the remedies described below in this Section. In addition, if one (1) or more events as described in **Section 10.2** occur that would give rise to a DOR Event of Default but DOR has effected a cure within the applicable time frames set forth in **Section 10.2**, if any, or thereafter, then Vendor nonetheless shall be entitled to the remedies set forth in **subsections (b) and (c)** below.

(a) Subject to DOR's rights as set forth below, fully or partially terminate the Agreement and/or the affected Project Agreement(s) or Contract Supplement(s); and/or

(b) Subject to the terms of **Article 11**, recover damages from DOR; and/or

(c) Any other additional remedies that may be set forth in a Project Agreement or Contract Supplement.

Licenses granted to DOR under the Agreement shall be irrevocable unless DOR materially breaches the license restrictions or other obligations set forth in **Section 4.1** and fails to cure (or, in the case of incurable breaches, fails to exercise all commercially reasonable efforts to substantially cure) such material breach within thirty (30) days following DOR's receipt of written notice from Vendor requiring DOR to cure the breach. Notwithstanding anything contained herein to the contrary, Vendor expressly waives and disclaims any right or remedy it may have under any existing or future Laws or otherwise to: (a) de-install, disable or terminate the use or access to the Solution or any portion thereof, interfere with DOR's quiet enjoyment of the Solution or terminate any license granted hereunder, before Vendor has received a final, non-

appealable judicial order terminating DOR's license or access and use rights; or (b) terminate, suspend or withhold any Services prior to any termination of the entire Agreement and expiration of the Transition Period; or (c) exercise any other form of self-help remedy.

**10.4 Rights and Remedies of DOR Upon Default of Vendor.** Upon the occurrence of a Vendor Event of Default, DOR shall be entitled to all of the remedies described below in this Section. In addition, if one (1) or more events as described in **Section 10.2** occur that would give rise to a Vendor Event of Default but Vendor has effected a cure within the applicable time frames set forth in **Section 10.2**, if any, or thereafter, then DOR nonetheless shall be entitled to recover damages from Vendor, subject to the terms of **Article 11**.

(a) Fully or partially terminate the Agreement, the affected Project Agreement or Contract Supplement (or Schedule or Exhibit thereto), Statement of Work or other document, or the affected line or category of Services being provided under a Project Agreement or Contract Supplement; and/or

(b) Subject to the terms of **Article 11**, recover damages from Vendor; and/or

(c) If a Disclosure Event has occurred, obtain the Deposits from escrow in accordance with the terms of the Source Code Escrow Agreement for use as provided in the Agreement and in such event, obtain the transfer of Knowledge as described in **Section 4.7**; and/or

(d) For terminated Services, obtain a refund of any pre-paid but unearned Services fees; and/or

(e) Obtain from Vendor transition Services in accordance with **Section 10.5**; and/or

(f) Any other additional remedies that may be set forth in a Project Agreement or Contract Supplement.

**10.5 Transition Services.** Upon an expiration or a complete or partial termination of the Agreement, one (1) or more Project Agreements, Contract Supplements or Exhibits, and/or one or more lines or categories of Services for any reason, DOR shall have the right, at DOR's option, for up to thirty six (36) months (the "**Transition Period**"), to all or any combination of the following:

(a) Continue to receive from Vendor all Support and Maintenance Services (at the applicable rates under the Agreement);

(b) If DOR will be transitioning to a new system or software solution (irrespective of whether DOR's license to use any Software has been terminated as provided in **Section 10.3**), receive from Vendor all Services reasonably necessary to effectuate an orderly transition to such new system or software solution, including:

(i) Providing assistance to DOR in transferring data files to an industry-standard format designated by DOR;

- (ii) Meeting with the successor system supplier, either in person or by telephone, as requested by DOR;
  - (iii) Providing to DOR all data formats, data definition file layouts and schematics;
  - (iv) Providing to DOR functional and technical specifications, and the source code and related documentation (including internally documented and separated documented instructions and materials) for interfaces to non-Contractor third party systems; and
  - (v) Providing to DOR such other materials and information as may be needed or required by DOR to effectuate the transition.
- (c) If DOR's license to use any Software has been terminated as provided in **Section 10.3**, continue to use the applicable Software for the purposes set forth herein and subject to the restrictions set forth herein; and
- (d) Obtain from Vendor the transfer of Knowledge described therein.

All Services (excluding Support and Maintenance Services, unless provided at DOR's option on a time-and-materials basis) provided by Vendor during the Transition Period shall be provided at the Service Rates or other applicable rates set forth in the Agreement. Notwithstanding the foregoing, if the Agreement or any Project Agreement or Contract Supplement, or an affected line or category of Services being provided under a Project Agreement or Contract Supplement is completely or partially terminated due to the occurrence of a Vendor Event of Default, Vendor shall provide such transition Services at no cost to DOR.

## **ARTICLE 11**

### **LIMITATION ON LIABILITY**

#### **11.1 Cap on Damages. EXCEPT AS SET FORTH IN SECTION 11.2:**

(A) WITH RESPECT TO PRIME VENDOR'S LIABILITY TO DOR, PRIME VENDOR'S CUMULATIVE LIABILITY TO DOR FOR ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL NOT EXCEED TWO (2) TIMES THE FEES PAID OR TO BE PAID UNDER THE AGREEMENT (INCLUDING OF ALL PROJECT AGREEMENTS, CONTRACT SUPPLEMENTS AND OTHER ORDERING DOCUMENTS); AND

(B) WITH RESPECT TO DOR'S LIABILITY TO PRIME VENDOR, DOR SHALL BE LIABLE TO PRIME VENDOR ONLY FOR UNPAID AND UNDISPUTED INVOICES FOR SERVICES AND EXPENSES (INCLUDING ANY INVOICES FOR SERVICES LATER DETERMINED TO BE VALID).

**11.2 Exclusions from Limitations on Liability.** Notwithstanding anything contained herein to the contrary, the limitations on liability set forth in **Section 11.1** shall not apply: (a) to claims arising as a result of personal injury, including death, caused by a party or its employees, agents and/or subcontractors; (b) to claims arising as a result of damage to real property or tangible personal property (including loss of data) caused by a party or its employees, agents and/or subcontractors; (c) to Vendor's failure to comply with its obligations under **Section 1.3.7** and **Articles 12** and **13**; (d) to any amounts paid by Vendor as Delay Credits and/or Performance Credits; and (e) any negligence or willful misconduct on the part of Vendor.

**11.3 Restoration of Liability Cap.** If, at any time: (a) (i) the total aggregate liability of Vendor for claims asserted by DOR under or in connection with the Agreement exceeds seventy percent (70%) of the limitation of liability amount in **Section 11.1(A)**; and (ii) Vendor does not agree in writing to increase such amount by the amount required to restore the full original value of the limitation of liability amount in **Section 11.1(A)** within thirty (30) days following its receipt of a written request from DOR that it do so; or (b) the total aggregate liability of Vendor equals or exceeds the limitation of liability amount in **Section 11.1(A)**, then DOR shall have the right to terminate the Agreement and/or any Project Agreement or Contract Supplement (in whole or in part) by delivering a written notice of termination to Vendor. Any termination pursuant to this Section shall not constitute a termination under any other provision of the Agreement.

**11.4 Costs of Cure.** To the extent a party elects to cure any failure by it to comply with its obligations under the Agreement, all costs and expenses associated with such cure shall be borne solely by the curing party and shall in no event count toward satisfaction of the cap on damages described in **Section 11.1**.

## **ARTICLE 12**

### **DATA RIGHTS AND CONFIDENTIALITY**

**12.1 Ownership of and Access to Data.** Each party is and shall remain the owner of all right, title and interest in and to any data that it owned prior to the Effective Date, and in and to any data to which it may hereafter acquire ownership. Without limiting the generality of the foregoing, DOR shall own all right, title and interest in and to DOR Data. Except as otherwise provided in the Agreement, no party shall be obligated to convey any right, title and/or interest in any data to the other. Subject to the terms of the Agreement, including the license rights granted to DOR hereunder, each party, upon request of the other, promptly shall return to the other any data owned by the other that may have been disclosed hereunder (including State Data). Vendor shall provide DOR access to all State Data generated or arising under the Agreement, Project Agreements, Contract Supplements and any other documents arising under the Agreement, all at no additional charge.

**12.2 Confidential Information.** Each party acknowledges that it may acquire or be exposed to Confidential Information of the other party. Having acknowledged the foregoing, the party that has received Confidential Information ("**Receiving Party**") agrees: (a) to exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential Information ("**Disclosing Party**") that it exercises with respect to its own Confidential Information, but in no event less than a reasonable degree of care; (b) not to use the Disclosing Party's Confidential Information except as permitted or contemplated hereunder; and (c) not to directly or indirectly disclose, distribute, republish or allow any Third Party to have access to any Confidential Information of the Disclosing Party without such Third Party



executing: (i) with respect to disclosure of Vendor Confidential Information, the Third Party Confidentiality and Non-Disclosure Agreement set forth in **Exhibit 3**, provided that for Third Parties that have a signed confidentiality agreement with DOR as of the Effective Date, such Third Parties shall not be required to execute the Third Party Confidentiality and Non-Disclosure Agreement; and (ii) with respect to disclosure of State Data, a confidentiality and non-disclosure agreement with no less protective confidentiality provisions than those set forth in the Agreement. Notwithstanding the above, but subject to the further requirements of the Agreement, as applicable: (d) DOR may disclose Vendor Confidential Information to DOR's Authorized Users who have a need to know; (e) Vendor may disclose State Data to its employees and authorized agents who have a need to know; and (f) a party may disclose Confidential Information if so required by Law (including court order or subpoena), provided that such disclosure is made in accordance with **Section 12.4**. With respect to Vendor's Confidential Information, such information shall not include information that is: (g) publicly available or later becomes available other than through a breach of the Agreement; (h) known to the Receiving Party or its employees, agents or representatives prior to disclosure by the Disclosing Party or is independently developed by the Receiving Party or its employees, agents or representatives subsequent to such disclosure; or (i) subsequently lawfully obtained by the Receiving Party or its employees, agents or representatives from a Third Party without obligations of confidentiality.

**12.3 Public Records Disclosures.** Notwithstanding anything contained in the Agreement to the contrary, including in **Section 12.2** or **12.4**, Vendor acknowledges that DOR is a public organization and that the terms and conditions of the Agreement (including all Project Agreements and Contract Supplements) and other Vendor information including Vendor Confidential Information, Documentation and Deliverables may be subject to disclosure under the applicable Law, including Washington State's Public Records Act (RCW 42.56). If such a disclosure request is made of DOR, DOR shall, generally within ten (10) business days prior to release, notify Vendor of any such request, in order to provide Vendor time to seek judicial relief if it believes such information should not be released. Subject to a court of competent jurisdiction issuing an order prohibiting such release or the requesting party notifying DOR in writing prior to DOR's planned release that it has rescinded its request for disclosure, DOR shall release and disclose all requested information without liability therefore.

**12.4 Confidentiality of Vendor Personnel.** Vendor shall cause all of its employees and any authorized subcontractor employees who have access to DOR's Confidential Information to be bound by a confidentiality agreement with confidentiality provisions no less protective than the confidentiality terms contained herein.

**12.5 Notification Obligation.** If the Receiving Party becomes aware of any unauthorized use or disclosure of the Confidential Information of the Disclosing Party, the Receiving Party promptly and fully shall notify the Disclosing Party of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Receiving Party or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information of the Disclosing Party, the Receiving Party shall not disclose the Confidential Information without providing the Disclosing Party with reasonable prior written notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party or any of its employees are nonetheless, in the written

opinion of the Receiving Party's counsel (a copy of which opinion shall be delivered to the Disclosing Party), legally compelled to disclose Confidential Information to any tribunal or otherwise stand liable for contempt or suffer other censure or penalty, the Receiving Party or its employees may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information that such counsel advises the Receiving Party that it is legally required to disclose. Notwithstanding the foregoing, the Receiving Party shall exercise its best efforts to preserve the confidentiality of the Confidential Information, including by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded the Confidential Information by such tribunal.

**12.6 Information Sharing.** DOR intends to share information with other states and governmental institutions to promote best practices using the Solution. The types of information shared by DOR with other states and governmental institutions may include design documents, functional specifications, technical specifications, reports and report formats, workflow processes, policies and procedures, printed training and education materials, computer-based training and education materials, Extensions, Interfaces, implementation strategies, configuration strategies and recommendations, screen shots and queries and job descriptions. Vendor shall permit DOR to share the above types of Vendor Confidential Information relating to the Solution with other institutions that are customers of Vendor.

## **12.7 Security.**

**12.7.1 Data Security Program.** Vendor shall maintain in effect at all times a comprehensive data security program that includes reasonable and appropriate administrative, technical and physical security measures designed to detect, prevent and mitigate the risk of identity theft and protect against the destruction, loss, unauthorized access, disclosure, use and/or alteration of data (whether or not encrypted), including DOR Confidential Information, in Vendor's possession or under Vendor's control, and which shall be no less rigorous than those measures that are required to be maintained by Vendor or DOR to comply with applicable Laws. Vendor will provide the data security program to DOR for its review, and DOR shall have the right to provide feedback and comment on Vendor's data security program. In addition, to the extent Vendor is working with DOR to design security features in the Solution, the Project Agreement (Statement of Work) will identify the process the parties will use to design and implement the security features. If Vendor recommends certain security features that DOR does not approve, the matter will be escalated to the DOR Executive Sponsor for final resolution.

**12.7.2 Security Breaches.** If Vendor discovers or is notified of the destruction, loss and/or unauthorized access, disclosure, use and/or alteration of DOR Confidential Information or any attempt to access DOR Confidential Information that is reasonably likely to result in the destruction, loss and/or unauthorized access, disclosure, use and/or alteration of DOR Confidential Information (each such event, a "**Security Event**"), Vendor shall without undue delay and unless prohibited by Law: (a) promptly notify DOR of the Security Event; (b) investigate the Security Event and provide reasonable cooperation with DOR's investigation of the Security Event, including periodic updates with respect to Vendor's investigation of the Security Event; (c) if the source of the Security Event is not within the control of Vendor personnel, provide reasonable cooperation with DOR's development of a risk assessment, root cause analysis and corrective action plan, including DOR's mitigation and remediation activities; and (d) comply to the extent

applicable to Vendor personnel, and provide reasonable cooperation with DOR in complying, with the requirements of all applicable Personal Information Laws and other applicable Laws. If the source of the Security Event is within the control of Vendor personnel, Vendor shall: (e) promptly provide a written report to DOR that sets forth Vendor's risk assessment, root cause analysis and corrective action plan; (f) implement the corrective action plan and mitigate the effects of the Security Event as soon as practicable; and (g) provide DOR periodic updates with respect to Vendor's mitigation and corrective action efforts.

**12.7.3 Personal Information and Data Breach Notification Laws.** Vendor acknowledges that DOR Confidential Information may include Personal Information pertaining to residents in Washington State and other states that have enacted Personal Information and Data Breach Notification Laws. Having acknowledged the foregoing, in addition to its obligations set forth in **Section 12.7.2**, Vendor shall comply with the requirements of all applicable Personal Information and Data Breach Notification Laws. If and to the extent any unauthorized access, disclosure or use of DOR Confidential Information: (a) is attributable to a breach by Vendor of its obligations under the Agreement, including the failure of Vendor to comply with the DOR Security Policies and Procedures; and (b) triggers notice or other requirements under a Personal Information and Data Breach Notification Law, Vendor shall bear the costs incurred by DOR and any Agency in complying with its or their legal obligations relating to such unauthorized access, disclosure or use of DOR Confidential Information, including the reasonable costs of providing notices, a toll-free call center / help desk, credit monitoring services and identity theft insurance to affected individuals for up to two (2) years. Nothing contained herein shall be deemed to release Vendor from its indemnification obligations as set forth in **Article 13**.

**12.8 HIPAA.** To the extent HIPAA compliance is required, if Vendor (or any subcontractor) will, or will likely, have access to protected health information (as defined in the Health Insurance Portability and Accountability Act of 1996, as may be amended from time-to-time ("**HIPAA**") of DOR, Vendor and any applicable subcontractor(s) shall execute the then-current form of Business Associate Agreement of DOR.

**12.9 Survival.** The terms of this **Article 12** shall survive the expiration or termination of the Agreement.

## **ARTICLE 13**

### **INDEMNIFICATION**

**13.1 General.** Subject to the further terms of this Article, Vendor (the "**Indemnifying Party**") shall assume all risk of and responsibility for, and shall indemnify, defend and hold harmless DOR, the State, and their respective officers, employees, contractors, officials, consultants, volunteers, representatives, agents, attorneys, successors and assigns (collectively, the "**Indemnified Parties**") from and against all claims, demands, suits, actions, recoveries, judgments and actual costs and expenses (including all attorneys', advisors and consultant fees and costs) in connection therewith on account of any Third Party claim arising out of or relating to: (a) bodily injury, including death, and real property and tangible personal property damage arising from or resulting directly or indirectly from the Solution, any Services or work and/or materials supplied under the Agreement and/or otherwise relating directly or indirectly from Ven-

dor's or its employees', agents' or representatives' acts or omissions; (b) Vendor's or its employees', agents' or representatives' failure to comply with the terms of **Article 12**; (c) any failure by Vendor to comply with its obligations under **Section 15.16**; (d) DOR's rights to indemnity under **Section 15.4**; (e) Vendor failure to timely deliver any Regulatory Modifications to DOR as required under **Section 1.3** of **Schedule 7.1**; (f) a breach of Vendor's obligations which results in a fine or penalty to an Indemnified Party; or (g) Vendor's negligence or willful misconduct in its performance under the Agreement. The indemnity provisions in this Section shall not be limited by reason of any insurance coverage required under the Agreement. Vendor's indemnity obligations under this Section may be reduced to the extent DOR is found to have been contributorily negligent.

**13.2 Infringement.** Subject to the further terms of this Article, Vendor shall indemnify, defend and hold harmless the Indemnified Parties from and against any claim asserted or any claim, suit or proceeding brought by a Third Party against the Indemnified Parties alleging that the Deliverables, the Solution, or any part thereof, or DOR's use of the Deliverables or Solution constitutes a misappropriation of any proprietary or trade secret information or an infringement of any patent, copyright, trademark or other Intellectual Property Right. Vendor shall pay all damages awarded or agreed to settlement payments, and any actual costs and expenses, including attorneys' fees, litigation costs (including the costs and expenses of any appellate bonds) arising from any such claim and incurred by the Indemnified Parties; provided, however, that the Indemnified Parties, after receiving notice thereof, promptly shall advise Vendor of any such claim, suit or proceeding and, at Vendor's expense, cooperate with Vendor in the defense thereof. If Vendor reasonably believes that any such claim, suit or proceeding may be successful, Vendor shall, at no additional cost to the Indemnified Parties, either: (a) procure for the Indemnified Parties the right to continue using the portion of the Deliverables and/or Solution subject to such claim, suit or proceeding; or (b) replace or modify the Deliverables and/or the Solution so that it no longer is subject to any such claim, suit or proceeding while maintaining equivalent or better functionality and performance capabilities. No undertaking of Vendor under this Section shall extend to any alleged infringement or violation to the extent that such infringement or violation arises from adherence to design modifications, specifications, drawings, or written instructions that Vendor is specifically directed by DOR to follow, or relates to uses of the Deliverables and/or the Solution in combination with other systems, furnished either by Vendor or others, which combination was not recommended or otherwise approved by Vendor, where the lack of the combination would not, in and of itself, be infringing.

**13.3 Industrial Insurance Immunity Waiver.** Vendor waives its immunity under Title 51 RCW (Industrial Insurance) to the extent required to indemnify, defend and hold the Indemnified Parties harmless under the Agreement.

#### **13.4 Procedures for Indemnification.**

**13.4.1 General.** Promptly after becoming aware of same, the Indemnified Parties shall notify Vendor of any Third Party claim covered under the terms of **Sections 13.1** or **13.2**, as applicable, for which the Indemnified Parties seeks indemnification.

**13.4.2 Defense.** The defense counsel selected by the Indemnifying Party shall be reasonably acceptable to the Indemnified Parties. Vendor acknowledges that, as a State entity, DOR is represented by the Attorney General's Office of the state of Wash-

ington which must approve of and appoint the Indemnified Parties' defense counsel as special assistant Attorneys General of the state of Washington.

**13.4.3 Settlement of Claims.** Vendor shall not settle any claim, suit or action without the prior written consent of DOR and/or the office of the Attorney General of the state of Washington, as required.

**13.5 Survival; No Limitations on Liability.** The terms of this Article shall survive any expiration or termination of the Agreement. Notwithstanding anything contained in the Agreement to the contrary, the terms of any limitations on liability clauses contained in the Agreement shall not apply to Vendor's indemnification obligations under this Article.

## **ARTICLE 14**

### **DISPUTE RESOLUTION**

**14.1 Administrative-Level Performance Review.** If a dispute relating to the Agreement arises between the parties, the Vendor Account Executive and the DOR Project Director may, but shall not be obligated to, meet and attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the initial request for a meeting, or if the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through an executive-level performance review as provided in **Section 14.2**.

**14.2 Executive-Level Performance Review.** For disputes that are not resolved at the Vendor Account Executive and DOR Project Director level, the Executive Sponsors may, but shall not be obligated to, meet and attempt to resolve the dispute. If such representatives are unable to resolve the dispute within five (5) business days after the parties have commenced negotiations, or ten (10) days have passed since the initial request for negotiations at this level, or if the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through mediation as hereinafter provided or, if the parties do not agree to submit the dispute to mediation, to seek any and all rights and remedies that may be available to them as provided in the Agreement.

**14.3 Voluntary, Non-Binding Mediation.** If the prior levels of dispute resolution are not invoked or are unsuccessful, the parties may, but shall not be obligated to, mutually agree in writing to submit the dispute to non-binding mediation. Mediation must occur within thirty (30) days after the parties agree to submit the dispute to mediation. The parties mutually shall select an independent mediator experienced in information systems of the type in dispute, and each shall designate a representative(s) to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the mediation shall be left to the discretion of the mediator and the designated party representatives and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party.

**14.4 Redress in Court.** Informal dispute resolution under this Article shall not be a pre-condition to any action by a party to enforce its rights under the Agreement.

**14.5 Continued Performance; No Tolling of Cure Periods.** Except where clearly prevented by the area in dispute, the parties shall continue performing their obligations under the Agreement while the dispute is being resolved as provided in this Article, unless and until the dispute is resolved or until the Agreement and/or the applicable Project Agreement or Con-

tract Supplement, as applicable, is terminated. The time frame for a party to cure any breach of the terms of the Agreement shall not be tolled by the pendency of any dispute resolution procedures.

## **ARTICLE 15**

### **MISCELLANEOUS**

**15.1 Notices.** Any written notice required or permitted to be delivered pursuant to the Agreement (other than project-related notices that may be sent by email) shall be in writing and shall be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via e-mail or fax, with a confirmation copy sent via overnight mail; or (d) one (1) business day after deposit with a national overnight courier, in each case addressed to the following address:

If to DOR:

Washington State Department of  
Revenue  
6300 Linderson Way  
Tumwater, Washington 98504  
Attention: \_\_\_\_\_  
Fax: (360) \_\_\_\_ - \_\_\_\_  
E-mail: \_\_\_\_\_

and

with a copy to:

Washington State Department of  
Revenue  
6300 Linderson Way  
Tumwater, Washington 98504  
Attention: \_\_\_\_\_  
Fax: (360) \_\_\_\_ - \_\_\_\_  
Email: \_\_\_\_\_

If to Vendor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_  
E-mail: \_\_\_\_\_

and

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_  
E-mail: \_\_\_\_\_

or to such other addresses as may be specified by a party upon notice given to the other.

### **15.2 Audits and Requests for Records.**

**15.2.1 Financial Audits.** At any time up to and including six (6) years following the termination of the Agreement, DOR (itself or through its Third Party auditor or a State auditor) shall have the right upon reasonable advance written notice and on an annual basis to fully audit the books and records of Vendor to the extent reasonably necessary to confirm the accuracy and appropriateness of all invoices issued under the Agreement, including all supporting details, and to verify compliance with applicable Laws. All such audits shall be conducted between the hours of 8:00 a.m. and 5:00 p.m. Pacific Time. If any audit demonstrates that Vendor has overcharged or undercharged DOR, then either:

(a) Vendor promptly shall refund the overcharges to DOR; or (b) following receipt of Vendor's invoice, DOR shall pay the undercharge to Vendor. Further, if any overcharge is in excess of five percent (5%) of the aggregate charges incurred during the period to which the audit relates, then Vendor shall reimburse DOR for the reasonable costs and expenses incurred to conduct such audit.

**15.2.2 Solution Usage Confirmation.** Confirmation of DOR's usage of the Solution shall be accomplished through an attestation process as follows: If Vendor believes that DOR is in violation of **Section 4.1**, at Vendor's written request, which request shall describe in detail the facts and circumstances giving rise to such belief and explain why Vendor believes that such facts and circumstances constitute a violation of **Section 4.1**, an officer of DOR shall promptly provide a written attestation to Vendor stating that DOR is in compliance with the terms of such section or stating the specific degree of non-compliance and DOR's immediate efforts to establish compliance, provided, however, that such attestation shall not create a separate cause of action in connection with a claim of breach under the Agreement. If Vendor disagrees with the attestation provided by DOR, the matter shall be referred to the Executive Sponsors or an Independent Auditor as provided for below for resolution. Based on the foregoing, Vendor waives its right to conduct a review or audit of DOR's usage of the Solution.

**15.2.3 Operational and Security Audits by DOR.** Upon prior written notice to Vendor, Vendor shall make available to DOR and its auditors and inspectors (including internal and external personnel) for the purpose of performing such audits or inspections access at all reasonable times to: (a) the data and records relating to the Services and Vendor's other obligations under the Agreement; and (b) Vendor's internal controls and systems as may be reasonably necessary to examine Vendor's performance of the Services and compliance with its duties, responsibilities and obligations under the Agreement including the safeguarding of State Data and compliance with the Security Policies and Procedures and the terms set forth in **Section 1.3.7**. Vendor shall provide to such auditors such assistance and support as they may reasonably request. If any audit reveals deficiencies, Vendor shall review the findings with DOR. If DOR and Vendor mutually agree that there are deficiencies to be corrected, Vendor shall prepare and deliver to DOR a detailed plan that is reasonably acceptable to DOR for correcting all such deficiencies.

**15.2.4 Washington State Audits.** Any audits permitted by Law or permitted under **Section 15.2** may be conducted by the State or a Third Party on its behalf. Vendor shall provide to the State such assistance and support as reasonably requested. If any audit reveals deficiencies, Vendor shall review the findings with the State and DOR and Vendor shall prepare and deliver to the State and DOR a detailed plan that is reasonably acceptable to correct all such deficiencies.

**15.2.5 Resolutions of Disagreements with Audits.** If DOR and Vendor do not agree with the results of any audit, the Executive Sponsors shall meet to attempt to resolve the matter. If the Executive Sponsors cannot resolve the matter, either party may require that the matter be submitted to an independent, nationally-recognized, reputable auditing firm ("**Independent Auditor**") to review the results of the audit and whether the deficiencies in dispute exist. The cost of the Independent Auditor shall be shared equally by the parties. If requested by such Independent Auditor, each party shall permit such

firm to conduct interviews of applicable personnel and engage in such other due diligence activities to verify whether such deficiencies exist and/or the audit findings can be confirmed. The Independent Auditor shall be tasked by the parties to issue a written opinion on its findings and such written opinion shall be binding on the parties with respect to the deficiencies cited therein. If the written opinion of the Independent Auditor confirms deficiencies with respect to Vendor, Vendor shall prepare and deliver to DOR a detailed plan that is reasonably acceptable to DOR for correcting all such deficiencies. Vendor shall implement all such corrections within the time frame(s) set forth in the plan. Vendor shall bear all costs and expenses associated with correcting all deficiencies. Any audits shall be conducted so as to be non-disruptive to a parties operations and business. User-level access may be granted to DOR applications to support such audits, and if necessary, will be coordinated between the parties.

**15.2.6 Maintenance of Records.** Vendor and its subcontractors shall maintain books, records, documents and other evidence relating to the Agreement, including Vendor performance, Minority and Women's Business Enterprise participation, protection and use of State Data and DOR's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of the Agreement. Vendor shall retain all such records for six (6) years after the expiration or termination of the Agreement. Records involving matters in litigation related to the Agreement shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of the Agreement, whichever is later. Where Vendor ordinarily and regularly in the course of business creates and maintains its books, records, documents and other evidence relating to the Agreement electronically, Vendor shall retain such electronically stored information in an electronic format that remains usable, searchable, retrievable and authentic for the periods set out herein, unless the parties specifically agree in writing to an alternative. Vendor shall incorporate in its subcontracts with subcontractors the terms and conditions of this Section. Books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from DOR's or its auditors' review unless the cost or any other material issue under the Agreement is calculated or derived from these factors.

### **15.3 Insurance.**

**15.3.1 Required Coverages.** At Vendor's sole cost and expense, Vendor shall procure and maintain in effect from and after the Effective Date and for the duration of the Agreement the insurance coverages described in the attached **Schedule 15.3.1**. Insurance may be maintained with one or more carriers, each of which must: (a) be authorized to do business in the State or be eligible surplus lines insurers acceptable to DOR and having agents in Washington upon which service of process may be made; and (b) have a financial strength rating of A- or better and a financial size category of A-XIII or better, each as reported in the most recent edition of Best's Insurance Reports (or any successor or replacement rating agency). Any insurance or self-insurance available to DOR shall be in excess of, and non-contributing with, any insurance that Vendor is required to procure and maintain. Vendor hereby waives its right of subrogation with respect to DOR, and each policy must include a waiver of subrogation in favor of DOR and the State. Vendor's insurance policies shall apply on a primary basis. To the extent that



claims are paid under any insurance coverage resulting in a reduction of the remaining coverage amounts, Vendor shall procure additional insurance as needed to continually meet and maintain the coverage amounts set forth on **Schedule 15.3.1**.

**15.3.2 Additional Insureds and Evidence of Coverage.** By endorsement to all liability policies except for the Professional Liability/Errors & Omissions and Internet Policies insurance and Industrial Insurance, DOR, the State shall be named as an additional insured for all liability arising from the Agreement. On or before the Effective Date, thereafter upon each insurance policy renewal, and otherwise promptly following DOR's request from time to time, Vendor shall provide DOR with certificates of insurance, together with copies of all applicable endorsements (by endorsement cross-liability of all insureds), evidencing Vendor's compliance with the requirements set forth in this **Section 15.3**. If at any time during the period when insurance is required by the Agreement, an insurer fails to comply with the requirements of the Agreement, as soon as Vendor has knowledge of any such failure, Vendor shall immediately notify DOR and immediately replace such insurance with insurance meeting the Agreement requirements set forth herein. Within ten (10) business days following Vendor's receipt of DOR's written request, Vendor shall provide (or cause to be provided) to DOR a certified copy of any insurance policies that are required under this **Section 15.3**.

**15.3.3 Claims-Made Coverage.** If and to the extent any insurance coverage required under the Agreement is purchased on a "claims-made" basis, such insurance must: (a) cover the acts or omissions of Vendor and any subcontractors, as applicable, up through and including the date that the Agreement and all Contract Supplements and Project Agreements have terminated and any Transition Periods have expired; and (b) be continuously maintained by Vendor, with full prior acts coverage, for at least six (6) years beyond the date that the Agreement and all Contract Supplements and Project Agreements have terminated and any Transition Periods have expired.

**15.3.4 Notice of Cancellation.** Vendor shall procure (or cause to be procured) endorsement(s) to its insurance policies that identify DOR as a scheduled party to receive written notice thirty (30) days in advance of the cancellation of any insurance required hereunder.

**15.3.5 Subcontractor Insurance.** If Vendor elects to have an approved subcontractor provide any Services to DOR, prior to providing any such Services, Vendor must furnish to DOR a certified copy of the applicable insurance policy or policies reflecting coverages of the type and amount agreed upon by Vendor and DOR pursuant to **Section 15.3**. Additionally, if an approved subcontractor provides Support and Maintenance Services, either: (a) such subcontractor must have commercial general liability insurance, professional liability/errors & omissions and internet policies insurance, ID theft and cyber extortion insurance and umbrella or excess liability insurance, all in the amounts set forth herein; or (b) Vendor's insurance policies must specifically cover all of such subcontractor's Support and Maintenance Services, and Vendor must provide documentation from the applicable underwriter(s), acceptable to DOR in its sole discretion, confirming such coverage.

## **15.4 Performance and Payment Bonds.**

### **15.4.1 Delivery and Amount.**

**(a) Performance Bond.** At the request of DOR, Vendor shall provide to DOR a performance bond, in a form acceptable to DOR in its sole discretion, including, without limitation, containing no terms or conditions that would require or mandate any form of mediation or arbitration as a condition of DOR's ability to collect on the bond, within thirty (30) days after DOR's written request. The performance bond shall be in an amount equal to fifteen percent (15%) of the applicable fees paid under a Project Agreement, Contract Supplement or other ordering document.

**(b) Payment Bond.** At the request of DOR, Vendor shall provide to DOR a payment bond in a form acceptable to DOR in its sole discretion, including, without limitation, containing no terms or conditions that would require or mandate any form of mediation or arbitration as a condition of DOR's ability to collect on the bond, within thirty (30) days after DOR's written request. The payment bond shall be in an amount equal to one hundred percent (100%) of the total value of the fees to be paid by Vendor to its subcontractors under any Project Agreement or Contract Supplement.

**(c) Increases in the Bond Amounts.** To the extent Change Orders, amendments or other ordering documents increase the fees payable by DOR to Vendor hereunder under a Project Agreement, Contract Supplement or other ordering document, Vendor shall increase the amount of the bonds in the following amounts: (a) for performance bonds, and amount equal to one hundred percent (100%) of such additional fees for any single amount over Fifty Thousand Dollars (\$50,000) or for any series of increases of fees (on a cumulative basis over the Term) of over Fifty Thousand Dollars (\$50,000) times fifteen percent (15%); and (b) for payment bonds, an amount equal One Hundred Percent (100%) of the additional amounts, if any, to be paid by Vendor to its subcontractors.

**(d) Cost of Bonds.** The premium for all bonds required above shall be paid solely by Vendor.

**15.4.2 Additional Bond Requirements.** Each bond must name the DOR and the State of Washington as the obligees. The bonds may be issued by one or more carriers, each of which must: (a) be authorized to do business in the State or be eligible surplus lines insurers acceptable to DOR and having agents in Washington upon which service of process may be made; and (b) have a financial strength rating of A- or better and a financial size category of A-XIII or better, each as reported in the most recent edition of Best's Insurance Reports (or any successor or replacement rating agency).

**15.4.3 Failure to Provide Bonds.** If Vendor fails to deliver the performance and payment bonds meeting the requirements of this **Section 15.4** within the time period set forth in **Section 15.4.1**, DOR shall be entitled to withhold any payments due or that may become due to Vendor until the requirements of this Section are met, or if no fees are then due or will become due, then DOR shall be entitled to a credit equal to Five Thousand Dollars (\$5,000) per business day, which credit Vendor shall, at DOR's option, ei-

ther pay directly to DOR or accrue and set-off against future amounts that will be payable.

**15.5 Approval of Service Subcontractors.** Vendor shall obtain DOR's prior written consent, which DOR may withhold in its sole discretion, before entering into an agreement with any subcontractor who may be retained by Vendor to provide Services of any kind under the Agreement. DOR may condition the approval of any subcontractor on the receipt of the proposed subcontract between Vendor and the subcontractor, to ensure that the subcontracted Services or other items are adequately covered. If DOR determines, in its sole discretion, that any previously-approved Vendor subcontractor is not satisfactorily performing its obligations, DOR reserves the right to require Vendor to replace such subcontractor with another subcontractor or for Vendor to directly perform such obligations. Vendor shall ensure that all such subcontractor agreements include provisions naming DOR as a direct and intended third party beneficiary or otherwise granting DOR the right to directly enforce Vendor's rights against such subcontractor and provisions substantially the same as those set forth in **Section 4.2** (where applicable) and **Article 12** of the Agreement. DOR shall not be bound by the terms of such agreements entered into by Vendor, and such agreements shall not contain any obligations with respect to DOR, including a guarantee of payments to such subcontractor. Any approval by DOR of Vendor's right to use a subcontractor shall be conditioned upon the following: (a) the agreement between Vendor and subcontractor not imposing or seeking to impose any liabilities or obligations on DOR, including the pass throughs of any termination fees, damages or costs in the event Vendor is required to replace the subcontractor; (b) DOR's ability to obtain a full assignment of such agreement upon written notice by DOR to the subcontractor following any default by Vendor under the Agreement and/or the applicable Project Agreement or Contract Supplement; (c) all employees of the subcontractor providing Services to DOR being subject to the terms and restrictions of **Article 5**; (d) Vendor being responsible for managing all subcontractor relationships; (e) Vendor being liable for the acts and omissions of any subcontractor under the Agreement or any Project Agreement or Contract Supplement; (f) DOR and Vendor agreeing to the level and types of insurance to be obtained by subcontractor; (g) Vendor and subcontractor incorporating the terms required by **Section 15.2.5** into their agreement; (h) subcontractor executing and delivering to DOR the Subcontractor Confidentiality and Non-Disclosure Agreement, the form of which is set forth in **Exhibit 2**; and (i) subcontractor and its personnel execute DOR's standard Secrecy Clause Affidavit. Vendor agrees that assignment of any subcontractor agreement to DOR shall in no way diminish, reduce, modify or affect Vendor's obligations and liabilities to DOR hereunder, and Vendor shall remain responsible for all such obligations and liabilities. Vendor further agrees that it shall indemnify, defend and hold harmless the Indemnified Parties for the actions of its subcontractors.

**15.6 Force Majeure.** Except as provided below, each party may be excused from performing any of its obligations hereunder, in whole or in part, to the extent that the inability to perform is caused by an act of God, war, riot, civil commotion, explosion, fire, government action, court order, epidemic, DOR-related labor activities or other similar circumstance beyond its reasonable control (each, a "**Force Majeure Event**"). Vendor's labor and union-related activities, the non-performance of Vendor or any Vendor subcontractor, and the inability or failure of Vendor to obtain permits, visas or other governmental authorizations for its personnel, regardless of cause, shall not constitute a Force Majeure Event. A failure of the Internet or telecommunications lines shall not be a Force Majeure Event if there is an alternative form of communication and/or diverse routing communications linkages available to Vendor. If a Force Majeure Event prevents, hinders or delays performance of either party's obligations hereunder for more

than ten (10) days at any time during the term, the party not prevented from performing shall have the right to terminate the affected portion of the Agreement and/or applicable Project Agreements and Contract Supplements as of the date specified by such party in a written notice of termination to the other party; provided that during such ten (10) day period the party whose performance is not prevented, hindered or delayed shall have the right to take all commercially reasonable actions that may be necessary to mitigate the impact of the other party's non-performance, and the party claiming a Force Majeure Event shall take all commercially reasonable actions that may be necessary to mitigate the impact of its non-performance.

**15.7 Notice of Financial Impacts.** Vendor shall provide written notice to DOR within five (5) business days following the occurrence of any event that will or may be likely to have a material adverse impact upon Vendor's ability to perform its obligations hereunder, including Vendor's breach of any significant contract, default of any credit agreement, denial of significant funding requests and/or the filing of a significant lawsuit against Vendor, and promptly (but in no event longer than ten (10) business days) thereafter shall meet with DOR to discuss Vendor's ability to continue to perform its obligations under the Agreement in light of such event.

**15.8 Bankruptcy.** The rights to the Software components comprising the Solution provided by Vendor to DOR under the Agreement constitute "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code, as amended, and the Agreement shall be governed by Section 365(n) of the Bankruptcy Code, as applicable, in the event Vendor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Vendor or the trustee in bankruptcy rejects the Agreement. In the event Vendor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Vendor or the trustee in bankruptcy rejects the Agreement under Section 365 of the Bankruptcy Code, DOR shall have the right to: (a) treat the Agreement as terminated; or (b) retain DOR's rights under the Agreement, specifically including the right to exercise its rights granted herein to the Software components (and to all work-in-progress relating thereto). Failure by DOR to assert its right to retain its benefits to the intellectual property embodied in the Software components pursuant to Section 365(n)(1)(B) of the Bankruptcy Code with respect to an executory contract rejected by Vendor or the trustee in bankruptcy shall not be construed by the courts as a termination of such contract by DOR under Section 365(n)(1)(A) of the Bankruptcy Code. Any attempted assignment of the Agreement by Vendor or the trustee in bankruptcy to a Third Party shall be subject to such Third Party providing "adequate assurance of future performance" (as referenced in Section 365(f) of the Bankruptcy Code) to DOR. Among other requirements as may be reasonably imposed, "adequate assurance" shall include a Third Party's express written agreement to assume all of Vendor's obligations under the Agreement.

**15.9 No Agency.** No party shall make any representations or warranties or incur any liability on behalf of the other. No party is the agent, representative or partner of the other party. The parties agree that Vendor is an independent contractor, that neither Vendor nor its employees, subcontractors and/or agents are employees of DOR and that DOR shall, on their behalf: withhold income or other taxes; provide Industrial Insurance; participate in group insurance plans which may be available to employees of DOR; participate or contribute to any public employees retirement system; accumulate vacation leave or sick leave; or provide unemployment compensation coverage. Neither Vendor nor its employees, subcontractors and/or agents are employees of DOR, and accordingly, none of them are entitled to any of the compensation, benefits, rights, or privileges of employees of DOR.

**15.10 Severability.** If any provision of the Agreement and/or any Project Agreement or Contract Supplement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Agreement and/or such Project Agreement or Contract Supplement.

**15.11 Waiver; Waiver of Non-Competition.** No delay or omission by a party to exercise any right occurring upon any non-compliance or default by the other party with respect to any of the terms of the Agreement and/or any Project Agreement or Contract Supplement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. Additionally, Vendor irrevocably waives any rights which it may have, by contract or otherwise, to require another person or entity to refrain from submitting a bid or proposal to, or providing products or services to, DOR or the State, and Vendor further agrees that it will not in the future, directly or indirectly, induce or solicit any person or entity to refrain from submitting a bid or proposal to, or providing products or services to, DOR or the State.

**15.12 Governing Law; Exclusive Jurisdiction.** The Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of the Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the Laws of the state of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any claim against DOR shall be initiated by Vendor within one (1) year after the claim arises, or be barred. Any suit or proceeding relating to the Agreement shall be brought only in the State courts located in Thurston County, Washington. **THE PARTIES EACH CONSENT TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS LOCATED IN THURSTON COUNTY, WASHINGTON.**

**15.13 Binding Nature and No Assignment.** The Agreement or any of its provisions shall not be assigned, delegated or transferred, including a Change of Control which shall be deemed to be a transfer, in whole or in part, by either party without the prior written consent of the other party. The Agreement shall be binding on the parties and their successors and permitted assigns.

**15.14 Counterparts.** The Agreement and any Project Agreements and Contract Supplements may be executed in one (1) or more duplicate originals, all of which together shall be deemed one and the same instrument.

**15.15 Public Announcements.** Without the prior written consent of DOR, which consent may be withheld in DOR's sole discretion, Vendor shall not make or publish, directly or indirectly, any statements, articles, public or private announcements (including any announcement made via e-mail or any posting on the Internet or any Vendor website), media releases, press conferences, advertising or similar publicity in any form relating to the fact that the parties have entered into the Agreement, the name, image or logo of DOR or any Agency (or any variation or combination of such name, image or logo), as well as the name or image of any DOR employee or contractor of DOR. Without limiting the generality of the foregoing, Vendor shall not, without DOR's prior written approval: (a) make any references to Third Parties that DOR is a customer

of Vendor; (b) include or make any reference to DOR or DOR's name in any proposals to Third Parties; or (c) provide DOR contact information to existing or prospective customers of Vendor.

**15.16 DOR Policies.** Vendor, its employees, agents and permitted subcontractors shall comply with all DOR policies, procedures, orders and directives (whether in final or "draft" form) that DOR provides in writing to Vendor, including those set forth on **Schedule 15.16** and all standards referenced therein and the State Travel Policy found in the Washington State Administrative and Accounting Manual (currently set forth in <http://www.ofm.wa.gov/policy/10.htm>) (collectively, the "**DOR Policies**"). Vendor acknowledges and agrees that the DOR Policies and the list of DOR Policies set forth on **Schedule 15.16** may change from time-to-time and that DOR may add, delete and/or change the DOR Policies and/or the list of DOR Policies set forth on **Schedule 15.16**, in its discretion.

**15.17 Compliance with Laws; Compliance with Civil Rights.** With respect to its obligations under the Agreement, Vendor shall at all times comply with all applicable Laws, including State data breach notice statutes, RCW 19.255.010 and RCW 42.56.590, federal and applicable state nondiscrimination Laws, including Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*, the Americans with Disabilities Act ("**ADA**") and Title 49.60 RCW, Washington Law Against Discrimination, the Gramm-Leach-Bliley Act ("**GLB**"), HIPAA, and all rules, regulations and policies promulgated thereunder, including the commitment to negotiate in good faith any sub-agreements that may be required to be entered into by the parties pursuant to such Laws, and any and all obligations to obtain similar protections in or institute safeguards with respect to any Third Party agreements and/or arrangements. Vendor shall comply with all Laws governing the importation, exportation or transfer of technology across national boundaries, shall obtain all necessary permits and governmental authorizations and approvals necessary to the performance of the Agreement. Vendor's noncompliance, or refusal to comply, with any applicable Law shall constitute an Event of Default pursuant to **Section 10.2(b)** and DOR shall have the rights and remedies set forth in **Section 10.4**, additionally Vendor may be declared ineligible for further contracts with DOR or the State.

**15.18 Waiver of UCITA.** The parties agree that the Uniform Computer Information Transactions Act or any substantially similar law is enacted as part of the law of the State or any other state ("**UCITA**"), shall not apply to the Agreement and, to the extent that UCITA is applicable, the parties agree to opt-out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein, if any.

**15.19 Binding, Irrevocable Offer.** In consideration of DOR agreeing to continue evaluating Vendor as its service provider, Vendor agrees that the signed Agreement by Vendor constitutes a binding, irrevocable offer to DOR on the terms and conditions set forth herein which shall remain in full force and effect through and including December 31, 2014, or such later date as may be agreed to in writing by the parties. The Agreement shall only become an effective and binding agreement upon DOR's execution and delivery of a copy of the Agreement to Vendor.

**15.20 No Construction Against Drafter.** The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of the Agreement.

**15.21 Attorneys' Fees.** If either of Vendor or DOR brings an action, suit or proceeding against the other arising out of or relating to the Agreement, or pertaining to a declaration of rights under the Agreement, the trier of fact may, in the exercise of its discretion, award the party it finds to be the prevailing party in such action, suit or proceeding that portion or all of its fees, costs and expenses (including court costs and reasonable fees for attorneys and expert witnesses) that it deems to be appropriate under the facts and circumstances. The term "prevailing party" for purposes of this Section shall include a defendant who has by motion, judgment, verdict or dismissal by the court, successfully defended against any claim that has been asserted against it.

**15.22 Security Interest.** The following terms and conditions shall apply if DOR elects to finance, in whole or in part, the purchase of the licenses under this Agreement:

(a) Vendor expressly acknowledges that DOR may finance purchases under the Agreement through the State of Washington Lease Purchase Program (the "**State Program**") as provided by RCW 39.94 and the standard forms of financing documents utilized by the State Program for the use and purchase of personal property, as described at <http://www.tre.wa.gov/government/leasePurchaseProgram.shtml>.

(b) Notwithstanding anything to the contrary contained in the Agreement and any ordering documents entered into under the Agreement, Vendor consents to DOR's grant of a security interest in DOR's license rights granted under the Agreement in the Vendor Software and Deliverables to the Washington Finance Officers Association (the "**Corporation**") and the assignment of that security interest by the Corporation to The Bank of New York Mellon, as trustee (the "**Trustee**") in connection with the intended DOR financing transaction referenced in **subsection (a)** above.

(c) Except as provided below, Trustee shall not use nor transfer to a third party any license rights in the Vendor Software or Deliverables. If there is a DOR Event of Default under the State Program or a non-appropriation of funds by the State Legislature such that DOR will be unable to meet its obligations under the State Program financing documents, Vendor consents and agrees that the Trustee thereafter shall have the right to realize upon its security interest in DOR's license rights in the Vendor Software and Deliverables and to transfer or assign DOR's rights in the Vendor Software and Deliverables as permitted under the State Program financing documents. The rights in and to the security interest in DOR's license rights in the Vendor Software and Deliverables shall be limited to the rights originally granted under the Agreement.

**15.23 Entire Agreement; Modifications.** The Agreement, together with all of its Schedules, Exhibits and Attachments, constitutes the final, complete and exclusive statement of the agreement of the parties relative to the subject matter hereof and supersedes all previous or contemporaneous oral or written proposals, negotiations, representations or understandings concerning such subject matter. The Agreement may be modified only pursuant to a writing executed by Vendor and the DOR Executive Sponsor, or his or her designee, in order to be effective against DOR. The parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to the Agreement or any amendments based on course of dealing, waiver, reliance, estoppel or other similar legal theory.

**IN WITNESS WHEREOF**, authorized representatives of the parties have executed this Technology Agreement effective as of the date written above.

**Approved**  
**Washington State Department of**  
**Revenue**

**Approved**  
**[Vendor]**

\_\_\_\_\_  
[Name, Title]

\_\_\_\_\_  
[Name, Title]

**Approved as to Form**  
State of Washington  
Office of the Attorney General

**[Vendor] Information**  
[Vendor] UBI Number:

Minority or Woman Owned Business  
Enterprise

\_\_\_\_\_  
Mark S. Lyon, Assistant Attorney General

Date: \_\_\_\_\_

Yes \_\_\_\_\_ No \_\_\_\_\_  
(Certification Number)



## SCHEDULE 1.6

### DEFINITIONS

**[DRAFTING NOTE: DEFINITIONS SCHEDULE TO BE UPDATED AFTER THE PROJECT AGREEMENT AND ASSOCIATED SCHEDULES ARE COMPLETED. THERE ARE REFERENCES IN THIS DRAFT SCHEDULE TO DEFINED TERMS THAT ARE ANTICIPATED TO BE PRESENT IN THE PROJECT AGREEMENT AND SCHEDULES WHICH ARE STILL BEING PREPARED]**

Whenever used in the Agreement, including in any Schedules, Exhibits, Attachments, Addenda and other documents attached to the Agreement, the following terms shall have the meaning ascribed to them below. Certain defined terms are set forth in the Software Escrow Agreement and have the meanings ascribed to them therein. Other capitalized terms used in the Agreement are defined in the context in which they are used and shall have the meanings ascribed therein. The terms defined in this Schedule include the plural as well as the singular.

"**ADA**" is defined in **Section 15.17**.

"**Affiliate(s)**" means any person, firm, corporation (including service corporation and professional corporation), partnership (including general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, association, business trust or other similar entity that, now or in the future, directly or indirectly, controls, is controlled with or by or under common control with Vendor. For purposes of the foregoing, "control" shall mean the direct or indirect control of fifty percent (50%) or more of the voting power to elect directors thereof, or any other entity, the power to direct the management of such entity. Upon request, Vendor shall provide DOR with a list of entities qualifying as Affiliates of Vendor.

"**Agency**" means any agency, office, institution, board, commission or department of the State.

"**Agreement**" or "**TA**" is referenced in the preamble and means this Technology Agreement, entered into by and between DOR and Vendor, effective as of the Effective Date, inclusive of all Schedules and Exhibits.

"**API**" means an application programming interface.

"**Approved Equipment Configuration(s)**" is defined in **Section 9.1.2**, and the Approved Equipment Configuration for the TLSR Solution is set forth in **Schedule 8.1 of Exhibit 1**.

"**Authorized Users**" means: (a) DOR and its respective employees, and any and all staff, volunteers, prospective employees, vendors, business partners and employees of other governmental organizations (e.g., the federal government) with whom DOR conducts business; (b) Third Party agents, consultants, system integrators, auditors and other independent contractors performing services for DOR and/or an Agency; (c) any persons and/or entities to whom or which DOR and/or an Agency provides business and/or enterprise services; (d) any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to data; (e) a facility manager or outsourcing or hosting services provider; and (f) such other persons as the parties may mutually agree.

"**Base Foundation**" is defined in **Section 4.2.2** of the TLSR Statement of Work.

"**C**" or "**Contributor or Actively Involved and/or Contributing**" is defined in **Section 1.1** of the TLSR Statement of Work.

"**Certification Criteria**" is defined in **Section 3.2.2**.

"**Certification Form**" is attached to the Agreement as **Schedule 3.2.3**.

"**Change of Control**" means: (a) any transaction or combination of transactions as a result of which either a person, an entity or a group of persons and/or entities that customarily has acted in concert and that presently is in control of a party ceases to be in control of such party; or (b) the sale, transfer, exchange or other disposition (including disposition in full or partial dissolution) of fifty percent (50%) or more of the beneficial ownership (as defined in Rule 13(d) of the Securities Exchange Act of 1934) of the voting power of a party, or of the assets of such party that constitute a substantial or material business segment of such party; or (c) the divestiture, in whole or in part, of the business unit or division of Vendor that has provided the Solution, Services and/or Equipment hereunder.

"**Change Order**", "**Change Request**" and "**Change Response**" are defined in **Section 5.3.2**.

"**Compliant**" is defined in **Section 9.3**.

"**Confidential Information**" shall mean: (a) information concerning the other party's business affairs, property and methods of operation that is marked "confidential" and/or "proprietary"; and (b) in the case of DOR, regardless of whether such information is marked confidential or proprietary: (i) State Data; (ii) any information and materials relating to Third Party vendors that have provided any part of DOR's and/or any Agencies' information or communications infrastructure; (iii) any information of DOR and/or any Agency that is maintained or stored by or through the Solution; and/or (iv) to the extent not covered above, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code and agency security data, or other information identifiable to an individual that relates to any of the foregoing types of information.

"**Contract Supplement**" is defined in **Article 2**.

"**Corporation**" is defined in **Section 15.22(b)**.

"**CPI**" means the annual increase in percentage points (or fraction thereof) of the official Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, published by the Bureau of Labor Statistics, United States Department of Labor. The CPI data shall be determined by reference to the "Percent Dec-Dec" column of the Consumer Price Index History Table for the applicable year, published by the United States Department of Labor, Bureau of Labor Statistics.

"**Critical Milestone**" means those key Deliverables and key events, to be identified in the Project Agreement or Contract Supplement, as significant project-related milestones deliverables

and events, and can include, for a particular component of the Solution, by way of example, finalization of design, complete configuration, commencement and/or completion of Pre-Live Testing, Production Use and Project Completion.

"**CSC**" is defined in **Section 1.5** of **Schedule 7.1**.

"**Data Protected by Law**" refers to data regulated and/or protected by Law, and includes all Personal Information.

"**Defect**" is defined in **Section 3.1** of **Schedule 7.1**.

"**Delay Credits**" is defined in **Section 5.2.4**.

"**Deliverables**" means Extensions, Interfaces, custom-developed software, documentation, designs, diagrams, configurations, functional specifications, technical specifications, data transformations, data aggregations, schematics, architectural renderings, prototypes, screen layouts and other documents and materials developed or prepared by Vendor, either alone or jointly with DOR.

"**Demonstrations**" means, those features, functionality, workflows, *etc.*, contained in the demonstrations presented to DOR. With respect to the TLSR Project, the Demonstrations have been recorded and placed on a DVD, a copy of which is incorporated into the TLSR Project Agreement.

"**Development Meetings**" is defined in **Section 3.8.4**.

"**Disabling Code**" is defined in **Section 9.1.6**.

"**Disaster Recovery and Business Continuity Plan**" is defined in **Section 5.4.2** of the TLSR Statement of Work.

"**Disclosing Party**" is defined in **Section 12.2**.

"**Documentation**" means, collectively, and shall be interpreted in the following order of precedence: (a) first, features or functionality and any special provision relating thereto, if any, as described in a Project Agreement or Contract Supplement; (b) second, the DOR Business and Technical Requirements; (c) third, Deliverables other than the DOR Business and Technical Requirements; (d) fourth, the Demonstrations; (e) fifth, the applicable RFP Response; (f) sixth, all of the written, printed, electronic or other format materials published or otherwise made available by Vendor to DOR; and (g) seventh, any user, operations, maintenance, repair and similar manuals other than Vendor or other software and/or equipment manufacturers and resellers make generally available to its customers, that relate to the functional, operational and/or performance capabilities of the Solution.

"**DOR**" is referenced in the Recitals and means the Washington State Department of Revenue and any successors and assigns.

"**DOR Business and Technical Requirements**" means the business and technical requirements and Performance Standards that may be attached to a Project Agreement or Contract

Supplement. With respect to the TLSR Project, the DOR Business and Technical Requirements are set forth in **Section 5.5** of the TLSR Project Agreement. For purposes of the Solution functionality warranty set forth in **Section 9.1.1**, the DOR Business and Technical Requirements originally set forth in a Project Agreement or Contract Supplement shall be replaced by the specifications set forth in the Solution Design Document, and shall become the replacement DOR Business and Technical Requirements, but only to the extent the business and technical requirements are specifically addressed in the Solution Design Document.

**"DOR Chief Information Officer"** means the DOR Chief of Information Technology, or his or her designee.

**"DOR Data"** means any and all data within DOR's possession, custody, or control, and any and all data that DOR has disclosed to Vendor. For the purposes of the Agreement, DOR Data does not cease to be DOR Data solely because it is transferred or transmitted beyond DOR's immediate possession, custody, or control, and with respect to **Exhibit 2**, is defined in **Schedule 2.2** therein.

**"DOR Executive Sponsor"** is defined in **Section 1.3.2**.

**"DOR Policies"** is defined in **Section 15.16**.

**"DOR Project Director"** is defined in **Section 5.4.1**.

**"DOR Project Manager(s)"** is defined in **Section 5.4.1**.

**"DOR Security Policies and Procedures"** means the following security standards, protocols, policies and procedures: (a) DOR's security policies and procedures, currently located at <http://ofm.wa.gov/ocio/policies/documents/141.10.pdf>, including the Washington State Office of the Chief Information Officer (OCIO) Securing Information Technology Assets (Standard No. 141.10) dated August 19, 2013; (b) National Institute of Standards and Technology (NIST) Special Publications 800-53 Security and Privacy Controls for Federal Information Systems and Organizations (currently located at <http://csrc.nist.gov/publications/drafts/800-53-rev4/sp800-53-rev4-ipd.pdf>); (c) NIST Special Publication 800-95 Guide to Secure Web Services (currently located at <http://csrc.nist.gov/publications/nistpubs/800-95/SP800-95.pdf>); (d) Open Web Application Security Project (OWASP) Guide to Building Secure Web Applications (currently located at <http://www.um.es/atika/documentos/OWASPGuide2.0.1.pdf>); (e) IRS Publication 1075 Tax Information Security Guidelines For Federal, State and Local Agencies (currently located at <http://www.irs.gov/pub/irs-pdf/p1075.pdf>) and FIPS 140-2 Security Requirements for Cryptographic Modules (currently located at <http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>); and the (f) Payment Card Industry Data Security Standards (PCI DSS) (currently located at [https://www.pcisecuritystandards.org/documents/pci\\_dss\\_v2.pdf](https://www.pcisecuritystandards.org/documents/pci_dss_v2.pdf)), each of which as may be updated from time-to-time.

**"Due Date"** means the date by which a Deliverable or Critical Milestone must be completed.

**"E"** is defined in **Section 10.1.3**.

**"Effective Date"** means the date, if any, on which the Agreement is counter-signed by DOR.

**"Emerging Products"** is defined in **Section 3.8.3**.

**"Enhancement Defects"** are defined in **Section 1.2.2(i) of Schedule 7.1**.

**"Enhancements"** means any releases, versions (including releases or versions that operate on a different or new platform or version of the operating system of the Equipment or any database or other equipment), improvements, modifications, upgrades, updates, fixes and additions to the Solution, no matter how designated, classified or marketed by Vendor that Vendor makes available pursuant to its obligations under the Agreement or that Vendor or the applicable Third Party vendor markets or generally makes available to its customers as part of support and maintenance services from time-to-time to correct deficiencies and/or to improve or extend the capabilities of the Solution.

**"Enterprise-Wide"** is defined in **Section 3.1.1**.

**"Equipment"** means any and all equipment purchased by DOR from Vendor pursuant to a Project Agreement or Contract Supplement.

**"Equipment Inventory"** is defined in **Section 4.8**.

**"Equipment Maintenance"** means the maintenance services for the Equipment.

**"Events of Default"** is defined in **Section 10.2**.

**"Executive Sponsor"** is defined in **Section 1.3.2**.

**"Extension"** means a configuration or other programming, other than a change to the Source Code, residing in the Solution to affect a function or feature that is not part of the generally available Solution.

**"Final Resolution"** is defined in **Section 3.1 of Schedule 7.1**.

**"Fit/Gap Document"** is defined in **Section 4.1.3** of the TLSR Statement of Work.

**"Fixed Fee"** means the fixed fee as defined in a Project Agreement or Contract Supplement.

**"Force Majeure Event"** is defined in **Section 15.6**.

**"FTEs"** is defined in **Section 8.4.2** of the TLSR Statement of Work.

**"GLB"** is defined in **Section 15.17**.

**"HIPAA"** is defined in **Section 12.8**.

**"Holidays"** means those days on which DOR observes a holiday in a particular calendar year as published from time-to-time by DOR.

**"Incident"** is defined in **Section 3.1 of Schedule 7.1**.

**"Incident Report"** and **"Incident Resolution Report"** are defined in **Section 3.3 of Schedule 7.1.**

**"Incident Response"** is defined in **Section 3.1 of Schedule 7.1.**

**"Indemnified Parties"** and **"Indemnifying Party"** are defined in **Section 13.1.**

**"Independent Auditor"** is defined in **Section 15.2.5.**

**"Information Security Officer"** is defined in **Section 1.3.7(b).**

**"Integrate"** or **"Integration"** means the process of functionally and technically linking together different computing systems and/or software applications so that the linked systems and/or applications Interoperate as a coordinated whole.

**"Intellectual Property Rights"** means any and all rights in and to all copyrights, inventions, patents, trademarks, trade secrets and any other proprietary rights in or to tangible or intangible property recognized in any jurisdiction in the world, whether or not registered or registerable.

**"Interface"** or **"Interfaces"** means the programming required to accomplish the coupling of one system, device or program with another system, device or program.

**"Interim Resolution"** is defined in **Section 3.1 of Schedule 7.1.**

**"Interoperate"** or **"Interoperability"** means that computer programs communicate, execute programs or transfer data seamlessly by and among the other computer programs in which they are intended to communicate, and, unless otherwise agreed by the parties in writing in connection with a Project Agreement or otherwise.

**"Invoicing Deadline"** is defined in **Section 8.4.3.**

**"ISO Security Standards"** is defined in **Section 1.3.7(c).**

**"Issue"** is defined in **Section 3.1 of Schedule 7.1.**

**"ITIL"** is defined in **Section 1.9 of Schedule 7.1.**

**"Joint Resource Plan"** is defined in **Section 5.2.1.**

**"Key Personnel"** is defined in **Section 5.4.2.**

**"Knowledge"** is defined in **Section 3.7.**

**"Law"** or **"Laws"** means all existing and future laws, statutes, regulations, rules, administrative codes, ordinances, executive orders, polices, judicial opinions and/or decrees and other decisions having the effect of law (and any amendments thereto) by any federal, state or local government, authority, department or agency in any location that DOR or an Agency conducts business.

"**Level 1 Defect**" and "**Level 1 Incident**" are defined in **Section 3.1 of Schedule 7.1**.

"**Level 2 Defect**" and "**Level 2 Incident**" are defined in **Section 3.1 of Schedule 7.1**.

"**Level 3 Defect**" and "**Level 3 Incident**" are defined in **Section 3.1 of Schedule 7.1**.

"**Minimum Available Support Term**" is defined in **Section 7.1**.

"**Mobile Standards**" means any Laws, guidance, recommendations, guidelines or reports published by the Federal Trade Commission (FTC), Federal Drug Administration (FDA), U.S. and state Attorney General Offices, and other regulatory or governmental bodies setting forth practices, policies and procedures to govern the use of mobile devices, including the following FTC Staff Report, issued February 1, 2013, and the State of California Attorney General report on Privacy on the Go, Recommendations for the Mobile Ecosystem, issued January 2013.

"**Multi-Party Incident**" is defined in **Attachment A to Schedule 7.1**.

"**N**" is defined in **Section 10.1.3**.

"**New Affiliate Agreement**" is defined in **Section 1.7**.

"**New Affiliate Agreement Products and Services**" is defined in **Section 1.7**.

"**OCIO**" means the Office of the Chief Information Officer of the State.

"**OIMS**" is defined in **Section 1.5 of Schedule 7.1**.

"**Optimization Period**" is defined in **Section 6.4**.

"**Ordinary Course Regulatory Changes**" is defined in **Section 4.1.2 of Exhibit 1**.

"**Original Estimated Hours**" is defined in **Section 8.3.3**.

"**OWASP**" means the Open Web Application Security Project standards and pronouncements, as adopted and/or published from time-to-time, including the OWASP Top Ten Project pronouncements.

"**Partnering Principles**" is defined in **Section 1.2**.

"**Payment Milestones**" is defined in **Section 4 of Exhibit 1**.

"**PCI DSS**" is defined in **Section 1.3.7(c)**.

"**Performance Credits**" means the financial consequences, if any, associated with failure of a Solution to conform to the applicable Performance Standards.

"**Performance Standards**" means the standards for performance of a particular Solution or Service, as applicable, and shall include: (a) the functionality and performance warranties set

forth in **Section 9.1**; and (b) as may be specified in the applicable Project Agreement or Contract Supplement.

**"Personal Information"** means: (a) State Data from which a natural person can be identified by reference to an identification number, including an individual's Social security number, driver's license number or Washington identification card number, or an account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; or (b) such other definition as may be set forth in Personal Information and Data Breach Notification Laws.

**"Personal Information Data Breach Notification Law(s)"** mean any law that regulates the disclosure, handling and/or security of Personal Information, including Washington Revised Statutes Section 19.255.010 *et seq.* and 42.56.590 *et seq.*, or any similar federal or state statute or regulation that exists as of the Effective Date or may be enacted in the future.

**"Phase Certification"** is defined in **Section 6.7**.

**"Phases"** is referenced in the opening paragraph of **Section 6**.

**"Planned Features and Functionality"** is defined in **Section 3.8.4**.

**"PMP"** is defined in **Section 3.2.2** of the TLSR Statement of Work.

**"Power Users"** is defined in **Section 4.3.2** of the TLSR Statement of Work.

**"Pre-Live Testing"** is defined in **Section 6.3**.

**"Product Roadmap"** is defined in **Section 3.8.2**.

**"Product Migration"** and **"Product Migration Credits"** are defined in **Section 1.2.7** of **Schedule 7.1**.

**"Production"** and **"Production Use"** is defined in **Section 6.4**.

**"Production Use Period"** is defined in **Section 6.4**.

**"Program Manager"** means the individual who maintains responsibility for the leadership, conduct and performance of a program.

**"Project Agreement"** is defined in **Article 2**.

**"Project Completion"** is defined in **Section 6.8**.

**"Project Manager(s)"** means the individual(s) who are assigned to lead the team that is responsible for achieving the project objectives.

**"Project Status Meetings"** is defined in **Section 5.1.1**.



"**Project Status Report**" means the report to be developed by Vendor in accordance with the terms of **Section 5.1.2**.

"**Project Plan**" is defined in **Section 5.2.1**.

"**PV**" is defined in **Section 1.1** of the TLSR Statement of Work.

"**R**" or "**Responsible**" is defined in **Section 1.1** of the TLSR Statement of Work.

"**RCA**" is defined in **Section 2(c)** of **Schedule 7.1**.

"**RCW**" means the Revised Code of Washington.

"**Receiving Party**" is defined in **Section 12.2**.

"**Regulatory Modifications**" are modifications to the Solution that enable the Solution to comply with applicable Regulatory Requirements.

"**Regulatory Requirements**" means governmental and quasi-governmental Laws, regulatory requirements, ordinances, policies, administrative codes, edicts, rules, guidelines or standards, and shall include, for purposes of the Agreement: (a) all Laws related to the use and functions of the Solution by DOR and their Authorized Users, including \_\_\_\_\_; (b) the Civil Rights Act (Title VII), the Americans with Disabilities Act (Title I) and Personal Information Laws; and (c) all other standards or guidelines established by committees, agencies or other standards-setting organizations implementing Regulatory Requirements.

"**Release**" is defined in **Section 1.2.1** of **Schedule 7.1**.

"**Review Period**" is defined in **Section 3.2.2**.

"**Risk**" means any potential event that could adversely affect the project's success (scope, resources, effort, quality, or schedule) at a future point in time. The impact to the project could take the form of diminished quality of the end product, increased costs, delayed completion or failure.

"**RFP**" is referenced in the Recitals, and includes all updates and supplements to the originally-issued RFP, along with all clarifications and additional information provided by DOR.

"**RFP Response**" means Vendor's response to a DOR request for proposal, including any supplements and clarifications thereto. Without limiting the foregoing and with respect to the TLSR Project, the RFP Response includes the following Vendor submissions: \_\_\_\_\_ and \_\_\_\_\_ **[DRAFTING NOTE: LIST EACH OF THE RFP SUPPLEMENTS AND RESPONSES]**.

"**RPO**" is defined in **Section 5.4.1** of the TLSR Statement of Work.

"**RTM**" is defined in **Section 4.1.2** of the TLSR Statement of Work.

"**RTO**" is defined in **Section 5.4.1** of the TLSR Statement of Work.

"**Scheduled Downtime**" is defined in **Schedule 8.2** of **Exhibit 1**.

"**SDD**" is defined in **Section 1.4** of the TLSR Statement of Work and means the solution design document.

"**Security Event**" is defined in **Section 12.7.2**.

"**Service Rates**" are defined in **Section 8.2.2** and are set forth in **Schedule 8.4.2**.

"**Service Request**" means any request related to the Solution that is submitted to the CSC by telephone, via Internet or otherwise.

"**Services**" means any and all services acquired or provided by DOR from Vendor, including any and all implementation services, Support and Maintenance Services, Equipment Maintenance, development services, data conversion or migration services, integration services, training and education services, consulting services and transition services.

"**SIT**," "**SIT Test #1**" and "**SIT Test #2**" are defined in **Section 6.3.4.2** of the TLSR Statement of Work.

"**SME**" means a subject matter expert, and for the TLSR Project, is defined in **Section 4.3.3** of the TLSR Statement of Work.

"**Software**" means all software licensed or provided by Vendor to DOR, including: (a) all Vendor-proprietary software (including Interfaces owned by Vendor); (b) all Extensions, Interfaces and other software-based Deliverables provided by Vendor to DOR; (c) all Third Party Software, including all Interfaces, Extensions and custom developments provided by DOR and owned by the applicable Third Party; (d) all beta, pre-release or pre-generally available release versions of software; and (e) all Enhancements to the software described in the foregoing.

"**Software License Fees**" is defined in **Section 8.1.1**.

"**Solution**" means the combination of Software and Equipment, as licensed and purchased pursuant to a Project Agreement or Contract Supplement.

"**Solution Component Certification**" is defined in **Section 6.7**.

"**Solution Module**" means a component of the Solution.

"**Source Code Escrow Agreement**" means that certain Escrow Agreement, by and between Vendor, DOR and \_\_\_\_\_, dated \_\_\_\_\_, 2014, and attached as **Exhibit 4**.

"**Stabilization Period**" is defined in **Section 6.4**.

"**Standard Transactions**" is defined in **Section 5.6.3** of the Statement of Work.

"**State**" means the state of Washington.

"**State Data**" means any and all data and information that Vendor, its Affiliates and/or Subcontractors receive, generate, collect, store, maintain or process in connection with the performance of the Services or Vendor's other obligations under the Agreement, including Data Protected by Law, and all information that supports any reports, findings, conclusions and recommendations by Vendor to DOR, including computer models and the methodology for those models.

"**State Program**" is defined in **Section 15.22**.

"**Statement of Work**" is defined in **Section 5.2.1**.

"**Subcontract Agreement**," "**Subcontractor NDA Agreement**" and "**Subcontractor**" are defined in **Exhibit 3**.

"**Support and Maintenance Services**" is defined in **Section 7.1**.

"**Support and Maintenance Services Fees**" means the then-current fees DOR pays Vendor to receive Support and Maintenance Services.

"**System Optimization Assessment**" is defined in **Section 1.8** of **Schedule 7.1**.

"**Technology Agreement**" is defined in the Recitals of **Exhibit 2** and **Exhibit 3**.

"**Test Materials**" is defined in **Section 6.2**.

"**Test Plan**" is defined in **Section 6.2**.

"**Third Party**" or "**Third Parties**" means persons, corporations and entities other than Vendor or DOR.

"**Third Party NDA Agreement**" is defined in **Exhibit 3**.

"**Third Party Software**" means all Third Party software licensed, sublicensed or otherwise provided by Vendor to DOR under the terms of the Agreement.

"**Third Party Solution Provider**" is defined in **Attachment A** to **Schedule 7.1**.

"**Time-Intensive Transactions**" is defined in **Section 5.6.3** of the TLSR Statement of Work.

"**TLSR Solution**" means the Software and/or Equipment as specified in the TLSR Project Agreement, including any Software or Equipment that are added by a Change Order and the Support and Maintenance and Equipment Maintenance of the TLSR Project.

"**TLSR Project Equipment**" means the Equipment set forth in **Schedule 5.1** of the TLSR Project Agreement.

"**TLSR Project**" is defined in the Recitals, is further described in the TLSR Project Agreement and includes the design, configuration and deployment of the TLSR Project.

"**TLSR Project Agreement**" means the Project Agreement for the TLSR Project, attached as **Exhibit 1**.

"**TLSR Project RFP Response**" is defined in the Recitals, and is incorporated into and made a part of the Agreement.

"**TLSR Solution Module**" means a Solution Module of the TLSR Solution.

"**TLSR Solution Response Time**" is set forth in **Schedule 8.2** of **Exhibit 1**.

"**TLSR Statement of Work**" is set forth in **Schedule 6.1** of **Exhibit 1**.

"**Transition Period**" is defined in **Section 10.5**.

"**UAT**" is defined in **Section 6.3.5.1** of the TLSR Statement of Work.

"**UCITA**" is defined in **Section 15.18**.

"**Unscheduled Downtime**" is defined in **Schedule 8.2** of **Exhibit 1**.

"**Updated Project Documents**" is defined in **Section 1.4** of the TLSR Statement of Work.

"**Vacancy**" means a circumstance in which Vendor does not have a specific individual fully performing the responsibility of the applicable Key Personnel position. A Vacancy includes Vendor's failure to provide a replacement within the time frames specified in **Section 5.4.4**. Additionally, if Vendor has a single person performing more than one (1) full-time position, a Vacancy will have occurred.

"**VDR**" is defined in **Section 1.1** of the TLSR Statement of Work.

"**Vendor**" means \_\_\_\_\_, and any successors and permitted assigns.

"**Vendor Account Executive**" is defined in **Section 1.3.4**.

"**Vendor Contract Manager**" is defined in **Section 1.3.6**.

"**Vendor Enhancement Correction Team**" is defined in **Section 1.2.2(i)(B)** of **Schedule 7.1**.

"**Vendor Executive Sponsor**" is defined in **Section 1.3.2**.

"**Vendor Implementation Methodologies**" means the methodologies used by Vendor to implement a product, Solution or Service, as may be further defined and described in a Project Agreement or Contract Supplement, and with respect to the TLSR Project, is defined in **Section 6.6** of **Exhibit 1**.

"**Vendor Project Director**" and "**Vendor Project Manager(s)**" are defined in **Section 1.3.5**.

"**Vendor Tools and Utilities**" is defined in **Section 3.5**.

"***Version***" is defined in **Section 1.2.1** of **Schedule 7.1**.

### **SCHEDULE 3.2.3**

#### **CERTIFICATION FORM**

#### **CERTIFICATION OF DELIVERABLES AND CRITICAL MILESTONES**

Deliverable Name: \_\_\_\_\_: Deliverable Number: \_\_\_\_\_

Critical Milestone Name: \_\_\_\_\_: Critical Milestone Number: \_\_\_\_\_

Check One:

- ☐ DOR certifies that the Certification Criteria for the above referenced Deliverable or Critical Milestone have been fully met.
- ☐ DOR certifies that the Certification Criteria for the above referenced Deliverable or Critical Milestone have been partially met as follows, and the balance of the Certification Criteria shall be met according to the Compliance Plan, a copy of which is attached to this Certification Form.

Certification Criteria Met: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Certification Criteria Not Met: \_\_\_\_\_  
(Must Attach an Agreed to Compliance Plan)

To be effective against DOR, this form must be signed by the DOR Project Director (or his or her designee as communicated in writing by DOR to Vendor). For Critical Milestones or Deliverables that result in a DOR payment obligation, the Certification Form must also be signed by the DOR Executive Sponsor to be effective against DOR.

\_\_\_\_\_  
Print Name: \_\_\_\_\_, DOR Project Director

\_\_\_\_\_  
Print Name: \_\_\_\_\_, DOR Executive Sponsor  
(Required for Critical Milestones and Deliverables that require payment)

**SCHEDULE 5.3.2**  
**CHANGE ORDER FORM**

Step 1: Change Request Description		
Title:		Change Order #:
Submitted By:	Phone # (Extension):	Date:
<b><u>Describe the Nature of the Requested Change:</u></b>  _____ _____		
<b><u>In-Scope vs. Out-of-Scope</u></b>  Is this change within the Project Scope? Yes ____ No ____  If Yes, explain basis for determination: _____		
Step 2: Initiation Approval		
Written Response by Vendor – Expected Date: __		
DOR Signature: _____ Date: _____		
Step 3: Scope of Work, Impact Analysis and Cost		
Part I. Scope – Describe the Work to be Performed by Vendor (Attach Functional Specifications, As Applicable)		
<b><u>Describe the work to be performed by Vendor:</u></b>  _____ _____		
Will Vendor develop and/or provide any Extensions, Interfaces or software-based Deliverables in performing its work? Yes ____ No ____		
If Yes, Vendor must propose a Support and Maintenance Services Fee, not to exceed 22% of		

the development fees, for Support and Maintenance Services, including the retrofitting and maintaining compatibility of such Extensions, Interfaces and Deliverables.

## Part II. Impact Analysis

**A. Impact on Critical Milestone Due Dates or Deliverable Due Dates?** Yes \_\_\_ No \_\_\_

Comments/Explanation:

\_\_\_\_\_  
\_\_\_\_\_

**B. Impact on Other Milestone/Key Dates or Deliverables?** Yes \_\_\_ No \_\_\_

Comments/Explanation:

\_\_\_\_\_  
\_\_\_\_\_

**C. Impact on DOR's Resources?** Yes \_\_\_ No \_\_\_

Comments/Explanation:

\_\_\_\_\_  
\_\_\_\_\_

**D. Update to Project Agreement or Contract Supplements:** If there are new or revised functional specifications applicable to this Change Order, or you answered "yes" to any of the above items, you will need to update and attach to this Change Order one (1) or more of the following documents (check which ones are applicable).

- ☐ **Statement of Work**
- ☐ **Project Plan**
- ☐ **Joint Resource Plan**
- ☐ **Payment Schedule**
- ☐ **DOR Business and Technical Requirements (New and Revised)**
- ☐ **Other (Please Specify)** \_\_\_\_\_



### Part III. Fees and Payment Terms

**A. Fixed Fee Quote:** \$ \_\_\_\_\_

Specify payments terms: \_\_\_\_\_

**B. Time and Materials/Not-to-Exceed** – If a Fixed Fee quote is not reasonably possible, provide either a time and materials fee estimate \$\_\_\_\_\_ or a not-to-exceed fee \$\_\_\_\_\_.

For time and materials estimates, specify the total estimated number of hours to complete the Services and the applicable Service Rate(s): \_\_\_\_\_

**C. No Charges Applicable to this Change Order – Vendor to Initial Here** \_\_\_\_\_

**D. Interfaces/Extensions – Ongoing Support and Maintenance Services Fees:**  
\$\_\_\_\_\_/year (not to exceed 22% of the development costs)

### Part IV. Vendor Signature

**Submitted by: Vendor**

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

### Part V. Approval of Change Order by DOR

Selection of Fee Arrangement: (Check Appropriate Box)

- ☐ Fixed Fee
- ☐ Time and Materials
- ☐ No Charge Change Order (Work is Considered Within Scope)

Agreed To: Washington State Department of Revenue

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

# **SCHEDULE 7.1**

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## **SCHEDULE 7.1**

### **SUPPORT AND MAINTENANCE SERVICES**

Vendor shall provide Support and Maintenance Services for each Solution in accordance with its general support offering to its customers and the terms set forth in this Schedule, provided that, in the event of a conflict between Vendor's general support offering and the terms and conditions set forth in this Schedule, the terms and conditions of this Schedule shall control. The Services referenced herein shall be included within the Support and Maintenance Services Fees paid by DOR to Vendor, except as otherwise expressly set forth herein. The terms of this **Schedule 7.1** shall only apply during the term of the Agreement while DOR is paying for Support and Maintenance Services. Without limiting the foregoing, Vendor shall provide Support and Maintenance Services for the Third Party Software that Vendor licenses to DOR in accordance with the terms of this Schedule, including the terms set forth in **Section 1.4** of this **Schedule 7.1**.

**1. Scope of Services.** Vendor shall provide to DOR the Support and Maintenance Services described in this Schedule to ensure that the Solution and Equipment functions in accordance with the applicable Performance Standards and to address Incidents as they may arise from time-to-time.

#### ***1.1 Defect and Incident Identification and Resolution.***

**1.1.1 Vendor Customer Service Center.** Trained Solution specialists shall diagnose and resolve Incidents and Defects. Action plans shall be developed with DOR until Incidents and Defects have been resolved or until further escalation is warranted. Vendor shall provide "continuous support," which shall mean twenty-four (24) hours per day, seven (7) days per week, for Level 1 Incidents. Vendor shall also provide "Operational Support" from Monday through Friday, 7:00 a.m. to 11:00 p.m., Pacific Time, to: (a) respond to and address Level 2 Incidents and Level 3 Incidents; and (b) provide live, in-person telephone support to DOR-designated individuals. Vendor shall provide DOR with a toll-free telephone number for contacting Vendor's support group. Telephone support shall include: (c) clarification of functions and features of the Solution and Equipment; (d) clarification of the Documentation; (e) guidance in operation of the Solution and Equipment (*i.e.*, tips, suggestions and workarounds), and the level of such telephone support shall be consistent with the parties' past practices; and (f) additional Services that are outside of the scope of the Support and Maintenance Services described herein, provided DOR approves electronically any such Service request (or determines to perform the work itself and closes the service request), and any such Services shall be provided at the Service Rates.

**1.1.2 Upgrade Assistance.** At DOR's request, and at the Service Rates, Vendor shall provide on-site assistance to DOR to implement Enhancements.

**1.1.3 Configuration Assistance.** At DOR's request, and at the Service Rates, Vendor shall provide configuration assistance to DOR to implement changes required to implement Regulatory Modifications and other changes to business rules as may be requested from time-to-time by DOR. Nothing contained herein shall diminish Vendor's obligation to make Regulatory Modifications to the Solution

to ensure that the Solution has the capability of being configured to meet the Regulatory Requirements.

## **1.2 Solution Enhancements.**

**1.2.1 General.** Vendor shall provide all Enhancements to DOR, and shall develop and provide to DOR all Enhancements necessary to: (a) maintain compatibility with all Third Party Software, including Enhancements to such Third Party Software; (b) maintain compatibility with current, generally available versions of Internet Explorer, Chrome, Firefox, Safari, and other browsers to which Vendor then maintains compatibility (as described in the Documentation) or that are specified in the DOR Business and Technical Requirements to which Vendor has agreed in a Project Agreement or Contract Supplement; and (c) maintain compatibility with changes to database, operating system and other software used by DOR in conjunction with the Solution (as described in the Documentation). To the extent technically feasible and functionally compatible, Vendor shall maintain compatibility between the Solution and the latest releases of software of Third Party vendors, e.g., Vendor shall maintain the Solution's compatibility with then-current release level of applicable database products in DOR's environment. Vendor shall ensure that all Enhancements, including Regulatory Modifications, successfully complete the testing process set forth in **Section 1.2.2** of this **Schedule 7.1** prior to delivery to DOR and shall deliver such Enhancements to DOR on the earlier of: (d) when five percent (5%) of Vendor's customers receive such Enhancements; or (e) when at least five (5) of Vendor's other significant customers receive such Enhancements. Notwithstanding the foregoing, DOR shall have the right to remain on any Release of the Solution that is the later of: (f) one (1) Release behind the then-current release; or (g) twenty-four (24) months from the installation of the existing release. For purposes herein, Releases are classified by Vendor as of the Effective Date in accordance with the following taxonomy: "X.Y", where "X" represents a new version (a "**Version**") and "Y" represents a new release (a "**Release**"). Releases currently are issued generally on an annual basis. If Vendor changes the taxonomy of its Enhancements and/or the general time intervals in issuing Releases, then the parties shall apply the new taxonomy on a basis to align to the original taxonomy. For example, if Vendor begins to issue Releases quarterly, then **subsection (c)** above will be deemed to read "8 Releases behind" to align with the annual cycle, i.e., 4 Releases/year x 2 years = 8 Releases. Subject to the right of DOR to remain on back Releases as provided above, DOR acknowledges that future Enhancements may require that DOR purchase additional equipment and/or Third Party software (and to have such items supported and maintained) and/or professional Services in order to continue to be eligible for Support and Maintenance Services and/or maintain the Solution Performance warranty.

**1.2.2 Quality Assurance Testing.** Vendor shall create and maintain one (1) or more test environments as appropriate or advisable to adequately test the Solution provided under the TLA Solution Project Agreement (and such other Solutions in the future as may be mutually agreed to by the parties and set forth in a Project Agreement or Contract Supplement) and any Enhancements. Vendor shall test each Enhancement in the test environment prior to delivery to DOR in accordance with Vendor's quality assurance process which, at a minimum, shall test for: (a) vulnerabilities and compliance with security obligations, including running OWASP tests, which test results shall be provided to DOR; (b) operation and per-

formance of the Enhancement in accordance with the applicable Performance Standards; (c) browser compatibility in accordance with **Section 1.2.1(b)** of this **Schedule 7.1**; (d) database and operating system compatibility in accordance with **Section 1.2.1(c)** of this **Schedule 7.1**; and (e) any regression problems using existing DOR usage and test cases and test data. Vendor shall correct any Defects and other non-conformities discovered during such testing and shall deliver each Enhancement to DOR only after such Enhancement has been approved by Vendor's quality assurance lead. Vendor also shall deliver or make available to DOR contemporaneously with the delivery of each Enhancement detailed Documentation describing such Enhancement. With respect to any Enhancement labeled in writing by Vendor as an emergency fix intended to correct a Level 1 Defect or Level 2 Defect, Vendor shall exercise all commercially reasonable efforts to test such emergency fix in accordance with the requirements of this Section, and in all events shall conduct sufficient and adequate regression testing.

**(i) Special Provisions Relating To Quality Assurance of Enhancements.** If, after Vendor delivers the Enhancement to DOR, DOR experiences Level 1 Defects or Level 2 Defects in an Enhancement ("**Enhancement Defects**") that have not been resolved in a reasonable time by Vendor's standard Support and Maintenance procedures, then Vendor shall provide the following personnel and shall comply by the following terms, at no additional cost to DOR (including weekends) until the Enhancement Defects are fully debugged and corrected:

**(A)** Vendor shall provide one (1) on-site appropriate technical representative from Vendor's development/engineering group on a continuous basis to assist DOR in debugging and correcting any Enhancement Defects.

**(B)** Vendor will assign a Senior Project Director to oversee and assist the testing and debugging of any Enhancement Defects. The Senior Project Director and the appropriate additional technical personnel Vendor assigns will be referred to as the "**Vendor Enhancement Correction Team**."

**(C)** DOR and the Vendor Enhancement Correction Team will have daily status update conference calls until the Enhancement Defects are resolved.

**(D)** If Enhancement Defects exist and cannot be resolved for a period of one (1) week or more, the matter shall be escalated via daily conference calls to Vendor's head of engineering, to facilitate closure of such items.

**(E)** If required to debug and correct the Enhancement Defects, Vendor will provide additional on-site engineering and technical services.

**(ii) Costs for Personnel.** If the reported Enhancement Defect (through a root cause analysis or otherwise) is shown not to be a Defect in the Enhancement or Solution, then DOR shall reimburse Vendor on a

time and materials basis at the Service Rates for the personnel and expenses incurred in providing the personnel set forth in **subparagraph (i)** above.

If Vendor disagrees with providing on-site Services, the matter shall be referred immediately to the Executive Sponsors for resolution.

**1.2.3 Process Improvement.** At DOR's request, Vendor shall provide to DOR a detailed description of Vendor's quality assurance process and/or a plan for improving or remedying any problems identified by DOR with respect to Vendor's quality assurance process.

**1.2.4 Special Provisions Pertaining to Deliverables Including Interfaces.** As part of Vendor's Support and Maintenance Services and at no additional cost to DOR, Vendor shall retrofit any then-existing Deliverables, including custom-developed Interfaces for which DOR is paying Support and Maintenance Services Fees, to ensure that such then-existing Deliverables will be compatible with any Enhancements provided by Vendor, and continue to function and operate as originally designed. By way of example, if DOR has an Interface to Version 1.0 of a Vendor product (not licensed by Vendor to DOR), and Vendor has made Version 2.0 available but DOR has not yet installed Version 2.0, then Vendor must develop the new Enhancement to accommodate and meet the requirements of Version 1.0 and not Version 2.0. The requirement to code to Version 1.0 shall apply even though Vendor may generally be developing the Enhancement for its other customers at the Version 2.0 level. If Vendor is retrofitting the Enhancement at the Version 1.0 level only for DOR (i.e., all of Vendor's other customers are using Vendor Version 2.0 and the Enhancement is not being used for any other customer at the Version 1.0 level), and DOR later wants to migrate to Version 2.0, then the cost of such migration (but not the cost of the Interface if Vendor made Version 2.0 of the Interface available to Vendor's other customers without charge) shall be chargeable at the Service Rates and shall be authorized under a Project Agreement, Contract Supplement or other ordering document.

**1.2.5 Obligation to Improve and Enhance the Solution.** Subject to DOR obtaining Support and Maintenance Services, in addition to correcting Defects and providing Enhancements necessary to address Regulatory Requirements for the Solution, Vendor shall make general improvements and enhancements to the Solution from time-to-time to extend the capabilities, functionality and features of the Solution, provided that the nature, extent and timing of all such improvements and enhancements shall be in Vendor's sole discretion. If Vendor discontinues improving and enhancing the Solution as required in the preceding sentence, then Vendor shall provide to DOR and implement, at no additional Software License Fees to DOR, the successor or replacement product (whether or not such product is owned by Vendor) that is substantially equivalent to the affected Solution in terms of functionality and performance capabilities and reasonably acceptable to DOR, and such replacement product shall be treated as an Enhancement under the terms of the Agreement.

**1.2.6 Reductions in Functionality.** If Vendor removes, reduces or disables any feature or functionality of a Solution that is then being used by DOR and that existed prior to such Enhancement or modification, then at DOR's re-

quest and at no cost or expense to DOR, Vendor shall either: (a) provide substantially equivalent replacement functionality to DOR that is reasonably acceptable to DOR; or (b) modify, adjust or customize such Solution for DOR's use, and continue to provide Support and Maintenance Services for such modified or customized Solution, so that the applicable feature or functionality remains available to DOR along with all of the other features and functionality of the enhanced or modified Solution, provided such replacement or modified or customized Solution shall be treated as an Enhancement under the terms of the Agreement. DOR acknowledges that Vendor may introduce an Enhancement that changes how a feature or function is expressed or used in the Solution, and, provided that the feature or function is not removed, reduced or disabled, such Enhancement may require that DOR expend additional costs or expenses to implement such Enhancement.

**1.2.7 Protection Against Product Obsolescence.** If within fifteen (15) years following Project Completion for the affected Solution, Vendor promotes and/or markets a replacement or successor product to the Solution or makes an infrastructure change, such as a change to the database, middleware, storage area networks and the like, the effect of which will require DOR to expend additional funds (each, a "**Product Migration**"), then Vendor shall provide DOR: (a) at no additional cost a license to the replacement or successor Solution; and (b) credits ("**Product Migration Credits**") equal to the fees paid by DOR to Vendor for Services paid under a Project Agreement or Contract Supplement in the following amounts:

Elapsed Time from Project Completion	Product Migration Credit – Based on Percentage of Fees Paid under the Project Agreement or Contract Supplement
0 to 7 years	100%
> 7 – 10 years	60%
> 10 – 12 years	40%
> 12 – 15 years	20%

Product Migration Credits shall not accrue when the Product Migration is the result of a discontinuation of a product line by or the ceasing of business operations of a Third Party. DOR shall have the right to apply the Product Migration Credits as a set off against any amounts due, or to become due to Vendor under the Agreement, or, at DOR's option, DOR shall have the right to apply such Product Migration Credits toward the purchase of equipment, software and services from Vendor.

**1.2.8 Enhancement Documentation.** Without limiting the other obligations set forth herein, all Documentation for the Enhancements shall comply with the terms set forth in **Section 3.4** of the Agreement.

**1.3 Regulatory Requirements.** Vendor shall provide Regulatory Modifications to DOR whenever such modifications are mandated or required to meet any Regulatory Requirements and are related generally to the then-existing features or functionality of the Solution. DOR shall notify Vendor of any new state or local Regulatory Requirements

affecting DOR after becoming aware of such Regulatory Requirements. Regulatory Modifications shall be at no additional cost to DOR (beyond the Support and Maintenance Services Fees). Vendor shall provide to DOR fully-tested Regulatory Modifications in accordance with **Section 1.2.2** of this Schedule and within the time frames set forth below so as to enable DOR to adequately test and deploy such Regulatory Modifications.

#### **1.4 Third Party Software and Equipment.**

**1.4.1 General.** Vendor shall serve as the primary point of contact for, and shall provide the Defect Analysis for, any Support and Maintenance Services requests initiated by DOR that relate to Third Party Software and, if Equipment supplied by Vendor to DOR is then covered under warranty or Equipment Maintenance, the Equipment. If Vendor cannot resolve the Defect through its actions as an intermediary, Vendor shall facilitate direct contact between the Third Party and DOR.

**1.4.2 Registration.** If registration of Vendor customers is available by the Third Party product vendor, Vendor shall register DOR with such Third Party product vendor. Upon request by DOR, Vendor shall produce evidence of such registration.

**1.5 Support and Maintenance Services History Tracking System.** Vendor shall maintain a DOR-specific Support and Maintenance Services history, including updated records of DOR's Solution configuration. Vendor shall provide DOR and State auditors with online access to and the ability to extract all such data from Vendor's online issue management system ("**OIMS**"), which shall provide, at a minimum, the following information: (a) the number of DOR calls received by Vendor's customer support center ("**CSC**") during the reporting period; (b) the date, time and the subject matter of each call; (c) the severity and urgency of the reported Incident or request; and (d) the resolution of each matter, including date and time resolved. All data history and other data related to DOR, an Agency and their Authorized Users residing in Vendor's OIMS or other support tools or trouble ticketing systems shall be and constitute data owned by DOR.

**1.6 Environments.** Vendor shall be obligated to provide Support and Maintenance Services at no additional cost to DOR for all of the equipment configurations specified in a Project Agreement or Contract Supplement or Vendor's Documentation.

**1.7 Alternative Arrangement for Support and Maintenance Services.** To the extent DOR elects not to renew the Support and Maintenance Services on an annual or other term basis due to a complete or partial termination of the Agreement, provided that DOR is then operating on a supported release of the Solution, Vendor shall make its general support services available to DOR on a month-to-month basis at the then-current Support and Maintenance Services Fees, pro-rated on a monthly basis.

**1.8 System Optimization Assessment.** At DOR's request and at no additional cost to DOR, Vendor and DOR jointly shall conduct an annual audit comprising approximately one (1) week of work effort (involving both on-site and off-site presence) of DOR's use of the Solution, the purpose of which shall be to identify opportunities for improving and maximizing DOR's utilization of the Solution ("**System Optimization Assessment**"). Upon the completion of such assessment, the Vendor Executive Sponsor



and Vendor Account Executive and other appropriate Vendor representatives shall present Vendor's findings to DOR at DOR's location.

**1.9 Information Technology Infrastructure Library.** Vendor has and will continue to implement best practices standards in service management. Vendor's current practices are based on the Information Technology Infrastructure Library ("*ITIL*"). The anticipated benefits from the ITIL approach include: (a) increased user and customer satisfaction with Services provided; (b) improved Service availability which leads directly to improved business performance; (c) financial savings from reduced rework and lost time, and improved personnel management and usage; (d) improved responsiveness to the market; and (d) improved decision making and optimized risk. At the request of DOR, Vendor shall meet with DOR to evaluate Vendor's implementation of the ITILs so that further improvements can be made by Vendor, including identifying any gaps in the Services as against the best practices. Vendor shall implement programs and initiatives as may be agreed to by the parties.

**1.10 Multi-Vendor Sourced Environment.** Vendor acknowledges that the Solution is being deployed as one of several components of DOR's total technology environment. As such, Vendor shall cooperate with DOR and all Third Parties that have services and/or products in DOR's technology environment, including as set forth in **Attachment A** to this **Schedule 7.1**, to minimize the disruptions, Incidents and Defects within DOR's technology environment and interfaced Third Party systems.

**1.11 OWASP Certification.** Every six (6) months and additionally within thirty (30) days of the delivery of any Enhancement to DOR, Vendor shall certify that the Solution(s) meets applicable OWASP secure coding and testing guidelines.

## **2. DOR Responsibilities.**

**2.1 Designated Support Contacts.** DOR shall designate one (1) or more system administrators to serve as the primary DOR contacts for Vendor's Support and Maintenance Services. DOR agrees to establish working procedures and be responsible for establishing a centralized support help desk, including training of appropriate personnel to provide end-user first-level support. Vendor agrees to provide and be responsible for second- and third-level support of the Solution through the CSC and development organizations.

**2.2 Backups and Procedures.** For Solutions operated by DOR, DOR will be responsible for maintaining a testing environment and for performing all necessary backups, recovery and required Solution operating procedures. Support and Maintenance Services Fees do not include Incident or Defect resolution that are caused by DOR not following Vendor's recommended procedures as specified in the Documentation.

**2.3 Remote Access.** Subject to the further terms below, for Solutions operated by DOR, DOR shall provide Vendor with both on-site and remote access to the Solution via the network configuration described in the DOR only section of the Vendor website. DOR shall be responsible for all telecommunication services and remote programming support connections charges. When accessing DOR's Solution, Vendor shall, and shall cause any approved subcontractor to, comply with DOR Policies. DOR may disconnect such access and/or disable any userids issued to Vendor for such access during any hours of operation and, thereafter, shall provide notice to Vendor of such dis-

connection or disablement within a reasonable time frame. If DOR disconnects such access or disables Vendor's passwords, Vendor shall remain responsible for maintaining and supporting the Solution, provided that DOR acknowledges that such disconnection or disablement may adversely affect the Defect resolution time frames set forth in **Section 4** of this **Schedule 7.1** and the ability of Vendor to deliver technical services to address the Issues or Defects.

**2.4 DOR Assistance in Resolving Defects.** DOR shall provide such assistance and cooperate with Vendor in helping to identify and address Defects. If DOR delays providing assistance, the total elapsed time of the delays shall be subtracted from the applicable time intervals in which Vendor is obligated to comply with respect to Support Credits set forth in **Attachment B**.

### **3. Incident Response.**

**3.1 Defined Terms Relating to Incidents and Defects.** The following defined terms have the meanings referenced herein:

**"Defect"** means any non-conformance of the Solution to operate in accordance with the Documentation, or the Solution to operate in accordance with the Performance Standards.

**"Final Resolution"** means Vendor delivers to DOR a correction or modification that permanently corrects the Defect, or non-Defect-based Incidents, a permanent solution that ensures the Incident will not be repeated.

**"Incident"** means any Level 1 Incident, Level 2 Incident or Level 3 Incident.

**"Incident Response"** means a fax, email, update to the OIMS or telephone call from Vendor acknowledging that an Incident Report has been received and that appropriate technical personnel have been assigned to work on the Incident.

**"Interim Resolution"** means Vendor: (a) reinitiates or restarts, as applicable, the Solution, if the reported Defect caused the Solution to be inoperative; (b) enables DOR to access the Solution, as applicable, if the reported Defect caused DOR to be unable to access the Solution; or (c) provides DOR with a workaround acceptable to DOR that solves or mitigates a reported Defect.

**"Issue"** is defined in **Section 3.1** of **Schedule 7.1** and also means any of the following: (a) any presently identified event, circumstance or problem that adversely affects the ability to meet project requirements, or a Deliverable Due Date or Critical Milestone Due Date, whether by Vendor, DOR or a Third Party; or (b) any event, problem, difficulty or circumstance which affects or may affect the Solution or the operation of the Solution by DOR, including the failure to meet the Performance Standards. Issues shall not include Defects (see definition of Defects)

**"Level 1 Defect"** means any Level 1 Incident that results from or is caused by a Defect.

**"Level 2 Defect"** means any Level 2 Incident that results from or is caused by a Defect.

**"Level 3 Defect"** means any Level 3 Incident that results from or is caused by a Defect.

**"Level 1 Incident"** means any security breach or any failure of a Solution or any part thereof to conform to the Documentation or Performance Standards that directly or significantly impacts the ability to use the Solution, or materially exposes DOR or its Authorized Users to liability because of operational, business, financial or information deficiencies.

**"Level 2 Incident"** means: (a) any failure of a Solution or any part thereof to conform to the Documentation or Performance Standards that adversely affects DOR's or its Authorized Users' use of the Solution; or (b) a Service Request that is urgent.

**"Level 3 Incident"** means: (a) any failure of a Solution or any part thereof to conform to the Documentation or Performance Standards that causes minor problems to occur with the Solution that can be circumvented without difficulty or disruption to DOR's or its Authorized Users' operations; or (b) a Service Request that relates to a nominal matter that does not need prompt attention.

**3.2 Incident and Defect Levels.** DOR shall classify, or reclassify, as applicable, all Incidents and/or Defects as Level 1, Level 2 or Level 3 Incidents and/or Defects, as applicable. Vendor shall honor DOR's classification. If subsequently Vendor disagrees on the classification of any Incident or Defect, such dispute shall be escalated for resolution in accordance with the procedures set forth in **Article 14** of the Agreement.

**3.3 Reporting and Management of Incidents.** Reports of Incidents (an **"Incident Report"**) shall be made by DOR to the CSC. DOR may access the CSC through either the OIMS, or, for Level 1 Incidents, by telephone 24 hours per day, 7 days per week to report such failures. The CSC shall log the reported Incident and provide DOR with an Incident tracking number to refer to when making follow-up inquiries. The Incident Report shall contain: (a) the date and time of the call; (b) the name of the product and the version or release number; (c) the name/type of affected Equipment; (d) the DOR contact name, e-mail address if available, telephone number and fax number; and (e) a description of the Incident and DOR's classification of the Incident. DOR shall provide Vendor with as much information as possible to enable Vendor to investigate and attempt to identify and verify the reported Issue or Defect. DOR shall work with Vendor support personnel during the problem isolation process, as reasonably needed. Vendor shall manage and maintain records with respect to the resolution of all reported Incidents (**"Incident Resolution Report"**) and facilitate a status calls in accordance with current practices with DOR. Vendor shall maintain the working history of Incident Reports and provide DOR with expected resolution dates, and, for Defects, a status of where the Defect correction is in the Vendor correction and quality assurance process.

**3.4 Escalation Procedures.** DOR shall have the right to escalate service requests and Defects for which an Interim Resolution has not been provided and/or not receiving the appropriate level of response. The Table below describes the escalation path:

Escalation Level	Client Services	Response Time
Level 1	Vendor Support Manager	1 hour
Level 2	Vendor Support Vice-President	4 hours
Level 3	Vendor Executive Sponsor	8 hours

In addition to the foregoing, if DOR believes a Defect or request is not being addressed in a timely or appropriate manner, DOR shall have the right to require Vendor to assign an appropriate support and/or technical resource from Vendor to coordinate and oversee resolution of such Defect or request. If appropriate for the situation, DOR and the Vendor-assigned resource coordinator shall have daily status update conference calls until the Defect or request is resolved. DOR also shall have the right to exercise its right to require on-site assistance as described in **Attachment B** to **Schedule 7.1** below if necessary to resolve a Defect. If these escalation procedures fail to produce a satisfactory resolution, the Executive Sponsors shall discuss a corrective action plan to resolve the timeliness of correcting Defects or requests. **4. Support Standards and Support Credits.** **Attachment B** to this **Schedule 7.1** sets forth the Support Standards and Support Credits that are applicable to the Support and Maintenance Services. The Support Credits are in addition to any other rights and remedies that may be available to DOR upon Vendor's failure to achieve the Support Standards set forth in **Attachment B**, including those set forth in **Article 10** of the Agreement.

## **ATTACHMENT A TO SCHEDULE 7.1**

### **MULTI-VENDOR SOURCING PROCEDURES**

This Attachment describes the operational processes that will govern the interactions between Vendor, DOR and Third Parties relating to the Interoperability of DOR's systems ("**Third Party Solution Provider**"). Upon detecting an Incident, DOR will make an initial determination of whether the Incident relates to a Solution or a Third Party system. If DOR believes that the Incident relates to the Solution, DOR will notify Vendor and Vendor will respond and resolve the Incident as set forth in **Schedule 7.1**, including **Attachment B** to this **Schedule 7.1**. If DOR believes that the Incident relates to the Solution and a Third Party system ("**Multi-Party Incident**"), DOR will notify Vendor of the applicable Third Party Solution Provider, and Vendor and the Third Party Solution Provider will respond and resolve the Multi-Party Incident as set forth in **Schedule 7.1**, including **Attachments A and B** to this **Schedule 7.1**.

#### **1. Help Desk Interaction Process.**

- (a) If DOR opens a ticket with Vendor related to a Multi-Party Incident, Vendor's Help Desk will coordinate and cooperate with applicable Third Party Solution Provider as necessary to resolve the Incident or Defect, including as provided in **Attachment B** to this **Schedule 7.1**. In order to resolve the Multi-Party Incident within the timeframes set forth in **Attachment B** to this **Schedule 7.1**, Vendor's Help Desk shall proactively communicate with the Help Desks of the applicable Third Party Solution Provider, while notifying DOR in writing (including through e-mail) of the time and substance all such communications.
- (b) Vendor and the applicable Third Party Solution Provider will transfer and track calls sent to and from their respective Help Desks. All information needed by DOR to confirm the proper Help Desk pass offs from one desk to another will be made available to DOR at times and formats as mutually agreed upon by the parties.

#### **2. Escalation Process.** If a ticket related to a Multi-Party Incident is handed off by Vendor to a Third Party Solution Provider and then returned by a Third Party Solution Provider to Vendor, or a Third Party Solution Provider to Vendor and then returned by Vendor to a Third Party Solution Provider, the ticket will be escalated to DOR.

The following steps will be followed by both Vendor and the Third Party Solution Provider to ensure cooperative and timely resolution of the ticket:

- (a) A triage event will be scheduled to include representatives from Vendor, the Third Party Solution Provider and DOR, if any Level 1 or Level 2 Incident is transferred (even once) back to the Help Desk that originally opened the ticket.
- (b) If Vendor and the applicable Third Party Solution Provider are unable to mutually determine the appropriate party responsible to resolve the ticket, DOR will have the right to assign it to either Vendor the Third Party Solution Provider.
- (c) If a Multi-Party Incident assigned to Vendor for resolution by DOR is transferred to a Third Party Solution Provider and eventually determined through root cause

analysis ("**RCA**") to be a Vendor responsibility, for purposes of measuring Interim Resolution and Final Resolution times, the entire time the ticket was unresolved shall be used in the calculation (*i.e.*, both the time that the ticket was with Vendor and the Third Party Solution Provider). This will provide an incentive for all providers to resolve the ticket expeditiously.

- (d) Without limiting the other terms of this Attachment, DOR may choose to have Vendor conduct an RCA for any Multi-Party Incident.

**3. Dispute Resolution and Alignment Process.** In the process of monitoring and resolving Multi-Party Incidents the following dispute resolution or mutual alignment process will be invoked: The Vendor Account Executive, an DOR representative and the project executive for the applicable Third Party Solution Provider will meet as requested by DOR to resolve all Issues and Defects. If they are unable to reach an agreement, the matter shall be referred to the Executive Sponsors for resolution.

## ATTACHMENT B TO SCHEDULE 7.1

### SUPPORT STANDARDS AND SUPPORT CREDITS

**1. Support Service Levels.** Set forth below are the Support and Maintenance Services service levels as well as personnel to be committed if Vendor does not meet such service levels. A failure to meet such service levels or provide such personnel will entitle DOR to the Support Credits as described below.

**2. Incident Response Times.** The Support Standard categories and the related Support Standards set forth below shall apply to the CSC Incident Response obligations.

Support Standard Category	Support Standard Description	Support Standards	Measurement Technique	Measurement Period	Support Credits
Incident Response for Level 1 Incidents	The time that lapses from when the Vendor detects a potential Level 1 Incident, a DOR-designated interface leaves a voice mail message with the CSC, or from when the CSC receives a fax or an email from a DOR-designated interface, until a qualified technician from Vendor has been assigned and is working the Level 1 Incident and a representative from Vendor calls the DOR-designated representative to identify such individual.	100% of the time a qualified technician from Vendor has been assigned and is working the Level 1 Incident within fifteen (15) minutes.	Call back response time will be determined with reference to DOR's and the OIMS for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DOR shall receive Support Credits from Vendor equal to a thirty percent (30%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DOR for the applicable month.
Incident Response for Level 2 Incidents	The time that lapses from when the Vendor detects an Incident that qualifies as a Level 2 Incident, a DOR-designated interface leaves a voice mail message with the CSC, or from when the CSC receives a fax or an email from a DOR-designated interface, until a qualified technician from Vendor has been assigned and is working the Level 2 Incident and a representative from Vendor calls the DOR-designated representative to identify such.	100% of the time a qualified technician from Vendor has been assigned and is working the Level 2 Incident within thirty (30) minutes.	Call back response time will be determined with reference to DOR's and Vendor's support tracking applications and Support and Maintenance Services logs for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DOR shall receive Support Credits from Vendor equal to a fifteen percent (15%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DOR for the applicable month.

Support Standard Category	Support Standard Description	Support Standards	Measurement Technique	Measurement Period	Support Credits
Incident Response for Level 3 Incidents	The time that lapses from when the Vendor detects an Incident that qualifies as a Level 3 Incident, a DOR-designated interface leaves a voice mail message with the CSC, or from when the CSC receives a fax or an email from a DOR-designated interface, until a qualified technician from Vendor has been assigned and is working the Level 3 Incident and a representative from Vendor calls the DOR-designated representative to identify such.	100% of the time a qualified technician from Vendor has been assigned and is working the Level 3 Incident within twenty-four (24) hours.	Call back response time will be determined with reference to DOR's and Vendor's support tracking applications and Support and Maintenance Services logs for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DOR shall receive Support Credits from Vendor equal to a five percent (5%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DOR for the applicable month.

**3. Defect Resolution.** The Support Standard categories and the related Support Standards set forth below shall apply to Vendor's obligations to identify and resolve Defects reported to the CSC. In addition to the applicable Support Standards, Final Resolution Support Standards may require the commitment of on-site Vendor personnel as further described below.

Support Standard Category	Defect Analysis	Support Standard Description	Support Standard (Interim Resolution)	Support Standard (Final Resolution)	Measurement Technique	Measurement Period	Support Credits
Defect Resolution—Level 1 Defects	One (1) hour	The time that lapses from when a Level 1 Defect is reported to the CSC or detected by the Vendor until the Defect is resolved as an Interim Resolution or Final Resolution, as applicable.	100% of the time, an Interim Resolution (or, at Vendor's option, a Final Resolution), is provided within four (4) hours after being reported or detected.	100% of the time, a Final Resolution is provided within twenty-four (24) hours after being reported or detected. After twenty four (24) hours have passed without Final Resolution, Vendor will send (at its expense) one (1) senior application expert and one (1) senior application programmer on-site at DOR on a seven (7) day a week basis until a Final Resolution is provided.	Defect resolution time frames will be determined with reference to DOR's and the OIMS for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DOR shall receive Support Credits from Vendor equal to a thirty percent (30%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DOR for the applicable month.



Support Standard Category	Defect Analysis	Support Standard Description	Support Standard (Interim Resolution)	Support Standard (Final Resolution)	Measurement Technique	Measurement Period	Support Credits
Defect Resolution—Level 2 Defects	Two (2) Hours	The time that lapses from when a Level 2 Defect is reported to the CSC or detected by the Vendor until the Defect is resolved as an Interim Resolution or Final Resolution, as applicable.	100% of the time, an Interim Resolution (or, at Vendor's option, a Final Resolution), is provided within eight (8) hours after being reported or detected.	100% of the time, a Final Resolution is provided within sixty (60) days after being reported or detected. After sixty (60) days have passed without Final Resolution, Vendor will send (at its expense) one (1) senior application expert and one (1) senior application programmer on-site at DOR on a five (5) day a week basis until a Final Resolution is provided.	Defect resolution time frames will be determined with reference to DOR's and the OIMS for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DOR shall receive Support Credits from Vendor equal to a fifteen percent (15%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DOR for the applicable month.
Defect Resolution—Level 3 Defects	Twenty-four (24) Hours	The time that lapses from when a Level 3 Defect is reported to the CSC or detected by the Vendor until the Defect is resolved as an Interim Resolution or Final Resolution, as applicable.	100% of the time, an Interim Resolution (or, at Vendor's option, a Final Resolution), is provided within forty-eight (48) hours after being reported or detected.	100% of the time, a Final Resolution is provided in the next Release.	Defect resolution time frames will be determined with reference to DOR's and the OIMS for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DOR shall receive Support Credits from Vendor equal to a five percent (5%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DOR for the applicable month.

**SCHEDULE 8.1.2**

**OPTIONAL SOFTWARE**

## **SCHEDULE 8.3.2**

### **SERVICE RATES**

There shall be no premium rates for overtime work.

On-site Service Rates as of the Effective Date:

Category/Description	Vendor List Hourly Rates	Hourly Services Rates - DOR Discounted Rate

The on-site Service Rates above are fully-burdened, and include all staffing accommodation, living, travel, out-of-pocket and other expenses.

Off-site Service Rates (which do not include any staffing accommodation, living, travel, out-of-pocket or other expenses as such expenses do not apply to off-site services) as of the Effective Date:

Category/Description	Vendor List Hourly Rates	Hourly Services Rates - DOR Discounted Rate

There shall be no premium rates for overtime work.

Staff Augmentation (Long-Term) Rates:

Category/Description	Weekly Rates*	Monthly Rates*

\* The staff augmentation rates are fully-burdened, and include all staffing accommodation, living, travel, out-of-pocket or other expenses.

**SCHEDULE 8.4.1**

**FORM OF VENDOR INVOICE**

**(SEE ATTACHED)**

## **SCHEDULE 15.3.1**

### **INSURANCE COVERAGES**

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/Claim	Annual Aggregate	
Industrial Insurance	Per state law requirements	Per state law requirements	The policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including occupational disease. The policy must include a waiver of subrogation in favor of DOR. The policy shall cover all Vendor's employees, including as may be required of an "employer" as defined in Title 51 RCW, and shall be in full compliance with Title 51 RCW.
Employer's Liability	<ul style="list-style-type: none"> <li>• Each Accident: \$1,000,000</li> <li>• Disease, Each Employee: \$1,000,000</li> <li>• Disease, Policy Limit: \$1,000,000</li> </ul>		
Commercial General Liability	\$5,000,000	\$10,000,000	The policy must include a waiver of subrogation in favor of DOR.
Business Automobile Liability	\$1,000,000		The policy must include a waiver of subrogation in favor of DOR.
Professional Liability/Errors & Omissions and Internet Policies	\$100,000,000	\$100,000,000	Must include coverage for Internet professional services, ASP, web portal, security/privacy. The policy must include a waiver of subrogation in favor of DOR.
ID Theft and Cyber Extortion	\$100,000,000	\$100,000,000	Must include coverage for crisis management and public relations expense. The policy must include a waiver of subrogation in favor of DOR.
Umbrella or Excess Liability	The greater of: (a) the fees due and to be due under the TLSR Project Agreement; and (b) \$100,000,000	The greater of: (a) the fees due and to be due under the TLSR Project Agreement; and (b) \$100,000,000	For Industrial Insurance, Employer's Liability, Commercial General Liability and Business Automobile Liability coverages. The policy must include a waiver of subrogation in favor of DOR.

**SCHEDULE 15.16**

**DOR POLICIES**

**[DRAFTING NOTE: TO BE PROVIDED]**

DOR Policy Number	DOR Policy Title